



TO COUNCILLOR:

Miss A R Bond
G A Boulter
Mrs L M Broadley (Chair)
Mrs K M Chalk

Miss M V Chamberlain (Vice-Chair)
M H Charlesworth
R F Eaton
R E Fahey

J Kaufman
Mrs H E Loydall

Dear Councillor *et al*

I hereby **SUMMON** you to attend a meeting of the **LICENSING AND REGULATORY COMMITTEE** to be held at the **COUNCIL OFFICES, STATION ROAD, WIGSTON** on **WEDNESDAY, 19 JULY 2017** at **6.30 PM** for the transaction of the business set out in the Agenda below.

Yours faithfully

Council Offices
Wigston
11 July 2017

Mark Hall
Chief Executive

<u>ITEM NO.</u>	<u>AGENDA</u>	<u>PAGE NO'S</u>
1.	Apologies for Absence	
2.	Appointment of Substitutes To appoint substitute Members in accordance with Rule 4 of Part 4 of the Constitution.	
3.	Declarations of Interest Members are reminded that any declaration of interest should be made having regard to the Members' Code of Conduct. In particular, Members must make clear the nature of the interest and whether it is 'pecuniary' or 'non-pecuniary'.	
4.	Minutes of the Previous Meeting held on 06 April 2017 To read, confirm and sign the minutes of the previous meeting in accordance with Rule 17 of Part 4 of the Constitution.	1 - 5
5.	Action List Arising from the Meeting held on 06 April 2017 To read, confirm and note the Action List arising from the previous meeting.	6
6.	Petitions and Deputations	



To receive any Petitions and, or, Deputations in accordance with Rule 24 of Part 4 of the Constitution.

- 7. Corporate Enforcement Update** **7 - 15**
Report of, and to be presented by, the Interim Head of Community Services.
- 8. Public Space Protection Orders** **16 - 27**
Report of, and to be presented by, the Interim Head of Community Services.
- 9. Environmental and Licensing Policy Report** **28 - 70**
Report of, and to be presented by, the Interim Head of Community Services.

For more information, please contact:

Licensing, Environmental Health or Building Control

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MINUTES OF A MEETING OF THE LICENSING AND REGULATORY COMMITTEE HELD AT THE COUNCIL OFFICES, STATION ROAD, WIGSTON ON THURSDAY, 6 APRIL 2017 COMMENCING AT 7.07 PM

<u>IN ATTENDANCE:</u>		
Chair - Councillor Mrs L M Broadley Vice-Chair - Councillor Miss M V Chamberlain		
COUNCILLORS (9):		
Miss A R Bond	M L Darr	J Kaufman
G A Boulter	R F Eaton	Mrs H E Loydall
Ms K M Chalk	R E Fahey	R H Thakor
OFFICERS IN ATTENDANCE (5):		
Mrs T Aldwinckle	Ms S Lane	Ms P J Samuels
S J Ball	J Mortell	

Min Ref.	Narrative	Officer Resp.
1.	<p><u>APOLOGIES FOR ABSENCE</u></p> <p>An apology for absence was received from Councillor M H Charlesworth.</p>	
2.	<p><u>APPOINTMENT OF SUBSTITUTES</u></p> <p>None.</p> <p>The Chair stated that she had received an email regarding the issue of named substitutes for committees in the new municipal year. Those named substitutes would have to attend the appropriate training, in addition to sitting Members of the Committee. The number of named substitutes would be <i>pro rata</i> to political party.</p>	
3.	<p><u>DECLARATIONS OF INTEREST</u></p> <p>None.</p>	
4.	<p><u>MINUTES OF THE PREVIOUS MEETING HELD ON 29 SEPTEMBER 2016</u></p> <p>RESOLVED THAT:</p> <p>The minutes of the previous meeting of the Committee held on 29 September 2016 be taken as read, confirmed and signed.</p>	
5.	<p><u>ACTION LIST ARISING FROM THE MEETING HELD ON 29 SEPTEMBER 2016</u></p> <p>The Environmental Health Team Leader stated that an update regarding taxi-licensing enforcement exercises was to be given at this meeting (Min Ref. 13)</p>	

	<p>RESOLVED THAT:</p> <p>The Action List be noted by Members.</p>	
<p>6.</p>	<p><u>PETITIONS AND DEPUTATIONS</u></p> <p>None.</p>	
<p>7.</p>	<p><u>ENVIRONMENTAL HEALTH AND LICENSING SECTIONS UPDATE</u></p> <p>The Committee gave consideration to the report and appendices (at pages 4 - 47) and the supplementary agenda update (at pages 1 - 10) as jointly-delivered and summarised by the Environmental Health Team Leader and Licensing Enforcement Officer which should be read together with these minutes as a composite document.</p> <p>Scale of Fees and Charges</p> <p>It was reported the new Scale of Fees and Charges had been brought into line with neighbouring Leicestershire authorities.</p> <p>The Environmental Health Team Leader stated that the Operator’s Licence Competency Test was now £40 (and not £36 as stated on the Scale of Fees and Charges as at section 2.1, vi). She stated that if Members’ were in agreement with the changes, they would then be published on our website.</p> <p>Councillor Mrs H E Loydall stated that she appreciated the time and work taken in updating the Scale.</p> <p>Food Hygiene Inspections</p> <p>Councillor Mrs H E Loydall asked if the statistical data for Food Hygiene inspections ratings A-E could be explained in more detail.</p> <p>The Environmental Health Team Leader advised that the rating looked at a number of issues (viz. from how the establishment is managed to how they have improved from the previous inspection) and confirmed that E was the highest rating and A was the lowest. If a business had to be revisited, then that business would be on the Council’s radar to visit more regularly, for example, six monthly instead of yearly.</p> <p>Councillor J Kaufman enquired as to why a newly opened business had a high rating.</p> <p>It was explained that if the business still had the same owners/management, that they would remain with the original rating.</p> <p>Licensing, Enforcement and Taxi Updates</p> <p>It was reported that following a complaint regarding taxis operating illegally in the Borough, the Licensing Enforcement Officer attended Manor Road, Oadby on an evening last September (2016) and during that time stopped thirty Leicester City Council licensed taxi vehicles and spoke to the licensed</p>	

drivers. Where appropriate, she advised them that they were operating illegally as they were out of their jurisdiction and they were given a boundary map.

The Licensing Enforcement Officer had also been speaking with the Head of Security at the University of Leicester to enable him to educate the students as to which taxis they should and should not be using given that the safety of students was paramount. She had also been in contact with 'Rock Star Events' who were the promoters for events held at the O2 Academy, University Road, Leicester. Most of the events which require taxis were held on Wednesdays and Friday nights, therefore further spot checks would be undertaken during these times during term time.

Councillor Mrs H E Loydall stated that in relation to taxi licensing on Manor Road, all events should be arranging a number of buses to/from planned events.

The Licensing Enforcement Officer confirmed that buses were in operation and ran frequently, but some students decide to take a taxi instead if they were waiting.

The Chair commented that the Borough is now at saturation point with (hackney carriage) licensed vehicles who had transferred over from Leicester City Council.

The Licensing Officer stated that by law, the Council could not restrict the number of licensed drivers, however the Council could make a restriction on the number of licensed vehicles but believed this was not necessary at this time.

Councillor Mrs H E Loydall stated that the amount of taxis around the Borough was now very noticeable and suggested it did need to be looked at imminently.

The Licensing Enforcement Officer stated that in September 2016, there were 96 licensed Hackney Carriage vehicles and at present 156, which was a 62% increase. For holders of combined Hackney Carriage and Private Hire drivers licences, there were 208 in September 2016 and at present 282, which was an increase of 26%.

Councillor Mrs H E Loydall stated that she was very concerned at the numbers of licensed drivers/vehicles, especially as the Borough is only 9 square miles. She suggested this Council's policy be reviewed to circumscribe any further increases. She asked how did the numbers compare with other authorities of a similar size.

The Licensing Enforcement Officer was said to be working on a joint operation on Oadby Road, Leicester with a Leicester City Council Licensing Officer and Sergeant Booth from Leicestershire Police on 12/13 May 2017. There is also to be a Joint Agency Group meeting on 9 May 2017 and both Council's Licensing Officers were to attend.

The Senior Democratic Services Officer / Legal Officer warned Members and Officers not to engage in any debate in respect of enforcement matters that

would disclosure into the public domain in open session any confidential and, or, exempt information which would otherwise be excluded (in accordance and as defined in the respective paragraph(s) 1, 2, 3 and 7 of Part 1 of Section 100(A)(4) of the Local Government Act 1972 (Exempt Information)).

The Licensing Enforcement Officer and Sergeant Booth were said to have visited several taxi companies and licensed premises which included an establishment on London Road which had recently changed management. The noise levels at the premises were said to be concerning neighbours, particularly when patrons come outside to smoke and that the police undertook a house to house survey. At present, the Licensing Enforcement Officer is trying to liaise with Civil Enforcement Officers to see if they can work a shift up until midnight to combat the issue of illegal parking.

The Licensing Enforcement Officer together with an Environmental Health Officer had visited a further establishment on several occasions and they had now been issued with a Community Protection Notice (CPN). There was to be a further function there on 8 April so would be attending again to see if the CPN was being complied with.

Public Space Protection Order (PSPO)

Councillor G A Boulter enquired as to when the report on Public Space Protection Orders (PSPO) would be published.

The Environmental Health Team Leader stated that it was currently being worked on and that she was liaising with the Legal Services to ensure all processes and timescales were met.

Dog Fouling and Stray Dog Service

The Environmental Health Team Leader made reference to the report on dog fouling which was delivered to previous meeting of the Service Delivery Committee. She also reported that the stray dog service was to continue providing evening and weekend cover.

Councillor Mrs H E Loydall asked if the Environmental Health team could put together an educational article to be published in Letterbox regarding dog fouling and the penalties etc. It was opined that the public did not seem to be aware that they could dispose of dog foul in any bins around the Borough (not just dog foul bins).

Councillor G A Boulter stated that labels could be affixed to normal bins advising that it is acceptable to dispose of dog foul in them.

Regulatory Updates

The Environmental Health Team Leader stated that an email had been received from the Home Office in relation to new guidance on the Policing and Crime Act 2017 containing information on the eligibility to work.

Councillor G A Boulter stated that Members of the Committee would require training to update them on the new policies and legislation.

Councillor H E Loydall suggested that in any future training this ought to include and report on abandoned vehicles, stray dogs etc. especially for new Members.

Better Business for All (BBfA)

The Environmental Health Team Leader referred to the BBfA as mechanism to 'educate whilst we regulate'. She was said to be attending a meeting in relation to the BBfA and would report back to a subsequent meeting of the Committee.

Matters Reported to the Service Delivery Committee Meeting on 21 March 2017

The Environmental Health Team Leader advised the Committee that information was provided at Appendix 4 for their perusal.

It was moved by the Chair and seconded by Councillor Mrs H E Loydall and

UNANIMOUSLY RESOLVED THAT:

- (i) The contents of the report be noted by Members; and
- (ii) The amended Scale of Fees and Charges for 2017/18 be approved.

THE MEETING CLOSED AT 8.01 PM



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CHAIR
.....

WEDNESDAY, 19 JULY 2017
.....

Agenda Item 5

LICENSING AND REGULATORY COMMITTEE

ACTION LIST

ARISING FROM A MEETING HELD ON THURSDAY, 06 APRIL 2017

Min Ref.	Title	Action To Be Taken	Officer	Target Date	On Target
7.	Environmental Health and Licensing Sections Update	The Hackney Carriage and Private Hire Licensing Policy be reviewed imminently, with a view to restrict the number of licensed Hackney Carriage vehicles.	PS JM TA	Jul-17	Verbal Update
7.	Environmental Health and Licensing Sections Update	To include an update on the new policies and legislation in relation to the Police and Crime Act 2017 and reports on abandoned vehicles and stray-dogs into subsequent Members' Training sessions.	PS JM TA	Nov-17	Yes



Licensing and Regulatory Committee	Wednesday, 19 July 2017	Matter for Information
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Title: **Corporate Enforcement Report**

Author(s): **Stephen Glazebrook (Interim Head of Community Services)**

1. Introduction

1.1 There are a broad range of environmental standards and legislation enforced by Environmental Health and Licensing either independently or inter-dependently with other sections of the Council. This Report seeks to inform Committee of the responsibilities and the enforcement outcomes achieved in the last two months.

2. Recommendation(s)

2.1 Members are asked to note the contents of the report.

3. Information

3.1 Asbestos Case – Marstown Avenue - update

The owner of the site is required to provide an analytical clearance certificate for the site to allow the control measure to be reviewed by colleagues in PHE (Public Health England.). The purpose being to provide a clear statement on the status of the gardens for the residents, as currently the advice provided by the PHE last year remains in place, i.e. the gardens are not to be used.

On 16th February the site owner arranged to revisit residents where their gardens had been 'cleared' last year, but he reported problems with limited access to some of the gardens at the time. Quotes are also being obtained by Oadby and Wigston Borough Council to undertake this work to bring the matter to a conclusion.

PHE are aware of the action being taken on the site.

3.2 Dog Fouling

In this current financial year, the main focus of activity has been the provision of advice and proactively stencilling and placing additional signage where necessary across the Borough. Regular monitoring is still being done in the parks and open spaces across the Borough. Eighteen (18) monitoring visits have been undertaken evenly across the Borough's parks and open spaces and is seemingly acting as a deterrent.

Reliable intelligence has led to letters being sent to alleged perpetrators and the complainants being advised of this action so as to encourage further reporting, where necessary. Educational signs have also been erected in areas to further encourage responsible dog ownership by owners cleaning up after their dogs.

A visit on 6 March 2017 confirmed the success of this intervention on one case in Timber Street, South Wigston where there was a noticeable improvement in the standard of cleanliness in this street.

There were 26 dog related cases reported in this time. Just over half of the complaints were directly related to dog fouling on the streets leading to advice, stencilling and signage. 18 stray dogs were picked up and taken to Kennels. Other reported incidents were dogs were being aggressive to neighbouring households.

3.3 **Pest Control**

39 initial requests regarding pests in domestic settings were received in that time and the breakdown is shown in the table below:

Pest Type	No.
Rats	22
Mice	10
Cockroaches	0
Squirrels	3
Fleas/bedbugs	4
TOTAL	39

4. **Enforcement of Litter, Fly tipping and Accumulations**

These three areas tend to merge in terms of how they are classified, how they differ and what action can be taken and by whom.

Presently, there is a shared responsibility between Environmental Health and the Green Team.

4.1 **Statistical Report**

Environmental Health received 20 reports of fly tipping during the period which were investigated and progressed within the stipulated response times. In addition to this the Borough is regularly monitored for any nuisances in line with the requirements of the Environmental Protection Act 1990 section 79 (1).

Anti Social Behaviour Crime and Policing Act 2014 s.43-58; four orders have been served in the period.

No Fixed Penalty Notices were served in the period.

5. **Legislative Review**

5.1 **Litter**

In the Oadby and Wigston leaflet prepared for residents entitled 'Litter and the Law – a guide for the public' it states that "Litter can be as small as a sweet wrapper, or as large as a bag of rubbish, or it can mean lots of items scattered about. The legislation also specifically clarifies that discarded gum products, cigarette ends, and matches are types of litter."

Section 87 (1) of the Environmental Protection Act 1990 states the offence of 'leaving litter' as such:

"A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it."

Further in that section it refers to litter being left in the open air in the area of a principal litter authority to which the public has access with or without payment.

5.2 **Fly Tipping**

Fly tipping is the illegal deposit of waste on land contrary to Section 33(1)(a) of the Environmental Protection Act 1990. The types of waste fly tipped range from 'black bag' waste to large deposits of materials such as industrial waste, tyres, construction material and liquid waste.

Local councils and the Environment Agency (EA) both have a responsibility in respect of illegally deposited waste. Local councils deal with most cases of fly tipping on public land, whilst the EA investigates and enforces against the larger, more serious and organised illegal waste crimes.

It is worth noting that in 2015/16 the estimated cost to Local Authorities in England was £49.8 million.

5.3 **Accumulations**

This describes any collection of waste material(s) in a specific location and could be as a result of the act of littering or fly-tipping. In section 79 (e) of the EPA1990 an accumulation is included in the list of statutory nuisance as:

"any accumulation or deposit which is prejudicial to health or a nuisance"

This essentially deals with the residue left from littering or fly-tipping whether it contains organic matter such as food items or inert material such as concrete, metal and wood. Environmental Health has powers to serve statutory notices for sites to be cleared and will enforce site clearance to the default of the site owner, if the notice has not been complied with.

6. **Abandoned Vehicles**

There have been 23 reports received of abandoned vehicles, all of which were investigated and progressed. In several cases, the reported vehicle did not meet the criteria for an abandoned vehicle so no formal action could be taken. In all such cases, the complainant was advised of the outcome of our investigation. Further work is being done to improve the quality of referrals so as to reduce the number of complaints of illegal or nuisance parking being reported as 'abandoned vehicles.

7. **Food**

7.1 **Food Inspections**

The Department has a duty to undertake inspections of Food Hygiene premises. During the inspection and under guidance from the Food standards Agency the premises are rated. The Food Hygiene Ratings can be viewed at <http://ratings.food.gov.uk/>

Food Hygiene inspections from 1/4/17, due to an absence of a member of staff, had an impact on the inspections undertaken. Additional funding was provided by the Council for a consultant Food Inspector resulting in the increased inspection frequencies.

Food Hygiene inspections by Month 2017

Month	No.
April	1
May	0
June	8
July	8

New business registered from 1/4/17 - 8

Request for revisit under Food Hygiene Rating System - 2

7.2 **Food Hygiene Rating System**

7.2 **System**

Scores by Category

Food Hygiene Category	Premises
0	1
1	3
2	3
3	18
4	51
5	245
Total	321
Broadly Compliant Category 4 and 5	93%

8. **Service Requests**

Service requests are issues received from Residents in relation to Environmental, Housing and Commercial issues.

The department has received 199 requests for Service between 1/4/17 to 30/6/17.

9. **Infectious Diseases**

The Department undertakes investigations of Infectious diseases in conjunction with Public Health England.

The department investigated 7 new cases of infectious disease between 1/4/17 to 30/6/17.

10. Departmental Update

During the reporting period 1/4/17 to 30/6/17 the Food Standard Agency annual statutory report has been submitted and an internal audit has also been carried out.

In addition, The Food Standard Agency "Regulating our future" Seminar was attended. The Seminar dealt with regulating food business after Brexit. The Key issues that arose where:

- Businesses will be required to pay for the service they receive from the LA inspection and or the use of regulated Auditors.
- The money raised is intended to be ring fenced to LA.

A more enhanced way of registration of new businesses is to be implemented and FHRS will then be made mandatory after Brexit.

11. Taxi Applications

On the 6 April 2017 the Licensing Enforcement Officer reported for the period of 5 April 2016 to the 6 April 2017 that the Licensing department had processed 450 applications relating to Taxi's only.

Below are the comparisons of licences held between 6 April 2017 and 6 July 2017.

Type of licence as of 6 April 2017	No.	Type of licence as of 6 July 2017	No.	Percentages
Combined Drivers badges	282	Combined Drivers badges	345	18%
Outstanding CD Applications	72	Outstanding CD applications	114	36%
Hackney plated Vehicles	156	Hackney plated Vehicles	189	17%
Private Hire plated vehicles	88	Private Hire plated vehicles	83	-5%

11.1 Increasing Demand

Due to the increasing demand of applicants applying for combined drivers badges, it has become necessary to increase the amount of competency tests to two each month to meet demand. We are presently taking bookings for October 2017.

Legislation dictates that the Council are not able to restrict the number of drivers and are unable to restrict the amount of Private Hire vehicles.

11.2 Local Government (Miscellaneous) Provisions Act 1976 Section 51 Licensing of Drivers of Private Hire Vehicles

Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

- a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or
- b) To any person who has not for at least twelve months been authorised to drive a motor car or is not, at the date of the application for the driver's licence, so authorised.

This section states the reason you can refuse a private hire driver's licence. Limiting the number of drivers is not one of the reasons.

11.3 **Local Government (Miscellaneous) Provisions Act 1976**

Section 48 Licensing of Private Hire Vehicles

- 11.3.1 Subject to the provisions of this Part of this Act, a district council may, on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence:

Provided that a district council shall not grant such a licence unless they are satisfied:

- a) That the vehicle is:
 - i) suitable in type, size and design for use as a private hire vehicle;
 - ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
 - iii) in a suitable mechanical condition;
 - iv) safe; and
 - v) comfortable
- b) That there is in force in relation to the use of the vehicle, a policy of insurance or such security as complies with the requirements of Part VI of the Road Traffic Act 1988 and shall not refuse such a licence for the purpose of limiting the number of vehicles in respect of which such licences are granted by the Council.

- 11.4 The Council is able to restrict the number of number Hackney Vehicle licences it issues, providing it is satisfied that there is no unmet demand for these vehicles (Transport Act 1985 section 16).

The provisions of the Town Police Clauses Act 1847 with; Taxi licensing: respect to hackney carriages, as incorporated in any enactment control of (whenever passed), shall have effect- numbers.

There is no obligation for the Council to undertake a survey of unmet demand unless it wishes to restrict the number of Hackney Carriage Vehicles it licenses. Members are advised that should they require such a survey and it indicates that a restriction in the number of licences issued is suggested, and implemented. The Council would have to carry out further surveys of unmet demand every 3-5 years. It is to be noted that the cost of the survey cannot be met from the licensing fees.

- a) As if in section 37, the words "such number of" and "as they think fit" were omitted; and

- b) As if they provided that the grant of a licence may be refused, for the purpose of limiting the number of hackney carriages in respect of which licences are granted if, but only if, the person authorised to grant licences is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet.

13. Enforcement Action

13.1 Taxi Enforcement:

Enforcement action is presently underway in relation for drivers who are breaching the Council's "Intended Use Policy".

Five applications for Combined Drivers licences are being scrutinised after the Licensing Department have received the DBS certificates and the applicant's suitability investigated. Two applications have been refused due to information contained within the DBS certificates received.

The Enforcement Officer has attended several meetings at County Hall in relation to a driver licensed within the Borough over safeguarding matters; the allegation against the driver is ongoing and he and his operator have been suspended from completing School contracts. Other Licensing authorities are providing safeguarding education to their drivers as a pre-requisite for holding a badge and it is the belief of the Enforcement Officer that this should be the case within Oadby and Wigston ensuring the safety of our residents and our drivers. A report will be provided to a later committee outlining proposals for safeguarding training for prospective drivers and existing drivers.

The Enforcement Officer is still working with PS Booth of Leicestershire Police in relation to Manor Road/Stoughton Road South in relation to the Leicester City Hackney Carriages plying for hire in our area. The academic year has ended which will reduce the amount of complaints that we have received. Due to recent terrorist attacks and operational commitments the Police have been unable to provide Police Officers to accompany Officers to conduct checks.

13.2 Licensed Premises:

Several licensed premises have been inspected in conjunction with PS Booth, since the last Licensing Committee meeting in April 2017 we have not received any further reports of noise nuisance from the properties on the Parade. However, there have been complaints of nuisance parking throughout Oadby. A response has been received from County Hall in respect of Civil Parking Enforcement Officers working overtime from 2000hrs to Midnight on a Friday and Saturday.

13. Launceston Road Shops

Reports have been received of underage drinking and littering at the rear of the Launceston Road Shops. On speaking to the Local Policing Neighbourhood team they have received the same reports however, when Officers have attended the area they have not witnessed this. Licensing checks have been made to all of the licensed shops on Launceston Road and the licensees spoken to. All have said that a small amount of young people congregate over the weekends but not for extended periods of time. All have been advised to research anti loitering equipment which prevents young persons from loitering by emitting a high pitch sound.

Background Documents:

None.

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Implications Community Enforcement Report	
Finance	There are no significant financial implications.
Chris Raymakers Finance and Accountancy Manager	
Legal	There are no significant legal implications.
Anne Court Director of Services / Monitoring Officer	
Corporate Risk(s) (CR)	<input checked="" type="checkbox"/> Regulatory Governance (CR6) Ensuring the Council adopt a coherent and transparent enforcement Policy across the Borough and across all tenures. <input checked="" type="checkbox"/> Other Corporate Risk(s) Failure to implement the Policy will leave the Council in a position of being unable to defend actions taken by enforcement offices in pursuance of their required duties.
Stephen Glazebrook Interim Head of Community Services	
Corporate Priorities (CP)	<input checked="" type="checkbox"/> An Inclusive and Engaged Borough (CP1) All the Borough will be covered by an all encompassing enforcement Policy. <input checked="" type="checkbox"/> Effective Service Provision (CP2) Provides direction and focus for enforcement decisions.
Stephen Glazebrook Interim Head of Community Services	
Vision & Values (V)	<input checked="" type="checkbox"/> Accountability (V1) Policy makes all enforcement officers responsible for a course of action. <input checked="" type="checkbox"/> Respect (V2) All persons that will meet enforcement offices will be provided with a respectful and transparent approach to dealing with the issues at hand. <input checked="" type="checkbox"/> Teamwork (V3) Cross department methodology building teamwork within the departments.
Stephen Glazebrook Interim Head of Community Services	
Equalities & Equality Assessment(s) (EA)	Not applicable.
Tony Cawthorne Environmental Health Officer	<input type="checkbox"/> Initial EA Screening <input type="checkbox"/> Full EA Assessment <input checked="" type="checkbox"/> Not Applicable

Agenda Item 8



Licensing and Regulatory Committee	Wednesday, 19 July 2017	Matter for Information and Decision
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Title: **Public Space Protection Orders (PSPO's)**

Author(s): **Stephen Glazebrook (Interim Head of Community Services)**

1. Introduction

The purpose of this report is to inform members of changes in legislation in relation to dog control and anti social behaviour.

2. Recommendation(s)

- 2.1 Members are asked to approve the implementation of Public Space Protection Orders in the Borough from 1 October 2017.
- 2.2 Members are asked to note the consultation survey which has been published on the Council's Website.

3. Information

- 3.1 A PSPO is a new provision, created by the 2014 Anti-social Behaviour, Crime and Policing Act, which is intended to deal with a particular nuisance or problem in a defined area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone.

The aim is to stop individuals or groups committing anti-social behaviour in public spaces. Restrictions and requirements can be placed on an area where activities have or are likely to have a detrimental effect on the quality of life of local people, is persistent or continuing in nature and is unreasonable. These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times.

The Guidance is not specific on what can be included in a PSPO. The potential for their use appears to be very broad and flexible to allow a Council to cover individual circumstances in its area. A PSPO can cover multiple restrictions so one order could prohibit such activities as the drinking of alcohol and keeping dogs on a lead. The PSPO can cover any publicly accessible space within the Council's area, including areas in private ownership to which the public have access.

Enforcement will be shared between the Council and the police. Breach of a requirement to desist in a particular activity is a criminal offence which can result in the issuing of a Fixed Penalty Notice (FPN) or a prosecution resulting in a fine of up to £1,000 on conviction. Enforcement can be undertaken by Council Officers, and other groups the Council may designate, but principally police officers and PCSOs. The police will additionally have the power of detention.

- 3.2 The Council have previously issued Bylaws and Orders in respect of dog controls which were signed off by the Secretary of State at the time and which are now superseded by PSPOs.

3.3 To satisfy that a PSPO is to be made, the Council must consider if they are satisfied on reasonable grounds that the activities carried out, or are likely to be carried out in a public space:

- Have had, or likely to have, a detrimental effect on the quality of life of those in the locality
- Is, or is likely to be, persistent or continuing in nature
- Is, or is likely to be, unreasonable and justifies the restrictions imposed.

3.4 In deciding to place restrictions on a particular public space the Council should consider the repercussions of that decision in that the problem may be dispersed elsewhere.

3.5 When placing restrictions on dogs and their owners the Council will need to consider that there are suitable alternatives for dogs to be exercised without restriction under the Animal Welfare Act 2006.

3.6 Before making a PSPO the Council must consult with the Police and Community representatives and the proposed consultation survey can be accessed by the following link <https://www.surveymonkey.co.uk/r/2ZLTBPD>

A copy of the draft order is attached at Appendix 1 together with a list of the proposed areas that the PSPO will apply to.

3.7 The PSPO, once in place, has to be reviewed every 3 years to ensure that they are still required.

Background Documents:

Bylaws and Orders

E-mail: stephen.glazebrook@oadby-wigston.gov.uk

Tel: (0116) 257 2674

Implications Public Space Protection Orders (PSPO's)	
Finance	There are no significant financial implications.
Chris Raymakers Head of Finance and Accountancy	
Legal	The existing bylaws expire on 30 September 2017 and the PSPOs need to be in place to replace them.
Anne Court Director of Services / Monitoring Officer	
Corporate Risk(s) (CR)	<input checked="" type="checkbox"/> Reputation Damage (CR4) Failure to implement PSPO's could damage the Council's reputation by not having the powers to carry out enforcement duties <input checked="" type="checkbox"/> Regulatory Governance (CR6) The policy and procedures must be in place to ensure compliance with the legislation <input checked="" type="checkbox"/> Failure to Respond to a Significant Incident (CR7) Without PSPOs in place the Council may not effectively respond to any significant incidents
Stephen Glazebrook Interim Head of Community Services	
Corporate Priorities (CP)	<input checked="" type="checkbox"/> An Inclusive and Engaged Borough (CP1) A clean and safe environment will contribute to an inclusive and engaged Borough <input checked="" type="checkbox"/> Green & Safe Places (CP4) PSPOs will enable the Council to take action in respect of dog fouling and anti social behaviour
Stephen Glazebrook Interim Head of Community Services	
Vision & Values (V)	<input checked="" type="checkbox"/> Accountability (V1) PSPOs will give the Council the power to take action and be fully accountable for its responsibilities <input checked="" type="checkbox"/> Respect (V2) PSPOs will contribute to residents having respect for their surroundings and other residents.
Stephen Glazebrook Interim Head of Community Services	
Equalities & Equality Assessment(s) (EA)	See below.
Stephen Glazebrook Interim Head of Community Services	<input checked="" type="checkbox"/> Initial EA Screening (<i>Appendix 1</i>) <input type="checkbox"/> Full EA Assessment <input type="checkbox"/> Not Applicable

Appendix 1

The Anti-social Behaviour, Crime and Policing Act 2014

The Public Spaces Protection Order - (Oadby and Wigston Borough Council) 2017

Oadby and Wigston Borough Council (in this order called "the Authority") hereby makes the following Order:

This Order comes into force on Monday the 25th of September 2017 for a period of 3 years.

Offences

1. Fouling

If within the administrative area of the Authority a dog defecates at any time on land to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission and a person who is in charge of the dog at the time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless

- a) he has reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

2. Leads by order

A person in charge of a dog shall be guilty of an offence if, at any time, within the administrative area of the Authority he does not comply with a direction given to him by an authorised officer of the authority to put and keep the dog on a lead unless

- a) he has reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so. An authorised officer may only give a direction under this order if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog that is likely to cause annoyance or disturbance to any other person, or to a bird or another animal.

3. Leads

A person in charge of a dog shall be guilty of an offence if, at any time, (during the period specified in the schedule if stated), on land detailed in Schedule 1 below he does not keep the dog on a lead unless

- a) he has reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

4. Means to pick up

A person in charge of a dog shall be guilty of an offence if, at any time, within the administrative area of the authority he/she does not have with him/her an appropriate means to pick up dog faeces deposited by that dog unless:

- a) he has reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his/her failing to do so.

The obligation is complied with if, after a request from an authorised officer the person in charge of the dog produces an appropriate means to pick up the dog faeces.

5. Exclusion

A person in charge of a dog shall be guilty of an offence if, at any time, he takes the dog onto, or permits the dog to enter or to remain on, any land detailed in Schedule 2 below unless

- a) he has reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

6. Exemptions

Nothing in this order shall apply to a person who:

- a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- b) is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he/she relies for assistance; or
- c) a person with a disability affecting their mobility, manual dexterity or ability to lift, carry or move everyday objects and who relies upon a dog trained by a prescribed charity for assistance.

For the purpose of this order:

- a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
- b) placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be sufficient removal from the land;

- c) being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces shall not be a reasonable excuse for failing to remove the faeces:
- d) "an authorised officer of the authority" means an employee, partnership agency or contractor of Oadby and Wigston Borough Council who is authorised in writing by Oadby and Wigston Borough Council for the purposes of giving directions under the order.
- e) Each of the following is a "prescribed charity":-
 - Dogs for the Disabled (registered charity number 700454)
 - Support Dogs Limited (registered charity number 1088281)
 - Canine Partners for Independence (registered charity number 803680)

7. Penalty

A person who is guilty of an offence under this order shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale

Schedule One

The Keeping of Dogs on Lead

This order applies to all land described below:

Map no. Location Geographical Area Ward/Parish

Oadby			
1	Ullswater	Oadby	Open space
2	Windrush Drive	Oadby	Open space
3	Aintree Crescent	Oadby	Open space
4	Berkeley Close	Oadby	Open space
5	Hill Field	Oadby	Open space
6	Uplands Playing Field	Oadby	Play area
7	Bull Head Street	Oadby	Open space
8	Florence Wragg Way	Oadby	Play area
9	London Road playground	Oadby	Play area
10	Rosemead Park	Oadby	Play area
11	Severn Road - balance res	Oadby	Open space
12	St Peter's Chrutyard	Oadby	
13	5-15 London Road Blind Garden	Oadby	
14	Iliffe Avenue Park	Oadby	Play area
15	Parklands	Oadby	Open space
16	Tynedale Close	Oadby	Open space
17	Hamble Road	Oadby	Open space
18	Hayden Walk	Oadby	Open space
19	Coombe Park	Oadby	Play area
20	Ellis Park	Oadby	Play area
21	Fox Hollow	Oadby	Play area
South Wigston			
22	Pochins Bridge	South Wigston	Open space
23	Taylors Bridge Road	South Wigston	Open space
24	Ellison Close	South Wigston	Open space
25	William Gunning Park	South Wigston	Play area
26	Blaby Road Park	South Wigston	Play area
27	Narrow Boat Close POS	South Wigston	Open space

	Wigston		
28	Bodmin Avenue	Wigston	Open space
29	Herrick Way	Wigston	Open space
30	Horsewell Lane Park	Wigston	Play area
31	Horsewell	Wigston	Open space
32	Mablowe Fields	Wigston	Open space
33	Meadows	Wigston	Open space & Play area
34	Penney Close	Wigston	Open space
35	Acorn Way	Wigston	Open space
36	Amesbury Road	Wigston	Open space
37	Grassington Drive	Wigston	Open space
38	Poplars/Freer Park	Wigston	Play area
39	Willow Park	Wigston	Play area
40	Hayes Park	Wigston	Play area
41	Attenborough Close	Wigston	Play area
42	Two Steeples Square	Wigston	Play area
43	Rosedale	Wigston	Open space
44	St Wistans' Churchyard	Wigston	
45	All Saints Churchyard	Wigston	
46	Kelmarsh Avenue/Alport Way	Wigston	Open space
47	Launceston Corner	Wigston	Open space
48	Meres Walk	Wigston	Open space
49	Peace Memorial Park	Wigston	
50	Lime Kilns/Heards Close	Wigston	Open space

Wigston Cemetery, Welford Road, Wigston, LE18 3TE

Oadby Cemetery, Wigston Road, Oadby LE2 5QB

Aylestone Lane Allotments, Aylestone Lane, Wigston LE18 1AA

Wigston Road Allotments, Wigston Road, Oadby LE2 5JE (approx)

Brabazon Road Allotments, Brabazon Road, Oadby LE2 5BN (approx)

Manchester Gardens Allotments, Blunts Lane / Long Lane, Wigston LE18

Schedule Two

Dog Exclusion Areas

This order applies to all land described below:

Map no. Location Geographical Area Ward/Parish

Ellis Park Bowls Green (inside Ellis Park, Brabazon Road, Oadby LE2 5BN)

Wigston Bowls Green (inside Peace Memorial Park, Long Street, Wigston LE18 2PB)

South Wigston Bowls Green (inside Blaby Road Park, South Wigston LE18 4PH)

Tennis Courts (inside Ellis Park, Oadby LE2 5BN)

Tennis Courts (inside Willow Park, Aylestone Lane, Wigston LE18 1AB)

Tennis Courts (inside Peace Memorial Park, Wigston LE18 2PB)

Multi use games area (inside Blaby Road Park, South Wigston LE18 4PH)

Skate Park (inside Willow Park Wigston LE18 1AB)

Skate Park (Inside Blaby Road Park, South Wigston LE18 4PH)



Part 1 - Initial Assessment or screening

Name of Policy/Function:		This is new
	X	This is a change to an existing policy
		This is an existing policy, not previously assessed

Date of screening	12 th April 2016
Name of screener	Tony Cawthorne

1. Briefly describe its aims & objectives

To identify the effects on the community on the uses of public spaces within the Borough following the proposed introduction of Public Space Protection Orders (PSPO) following the revocation of the bylaws relating to the Regulation of Dogs and the designation order under the Dogs(fouling of Lands) Act 1996

2. Are there external considerations? (Legislation/government directive etc)

The Anti-social Behaviour, Crime and Policing Act 2014 and Statutory guidance for frontline professionals.
Animal Welfare Act 2006.

3. Who are the stakeholders and what are their interests?

Oadby and Wigston Borough Council ownership of Parks and public open spaces, sports facilities and memorial gardens.
Church Cemeteries and grounds
The general rate paying public who pay for and expect access to a dog mess free public service.
Dog owners who want to use the resources and not be fined, or want to contribute to a cleaner environment.

4. What outcomes do we want to achieve and for whom?

PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

5. Has any consultation/research been carried out?

Yes
Internally with Client Services and Facilities Management. Out to general consultation with the public and also the police

6. Are there any concerns at this stage which indicate the possibility of inequalities/negative impacts? (Consider & identify any evidence you have - equality data relating to usage & satisfaction levels, complaints, comments, research, outcomes of review, issues raised at previous consultations, known inequalities) If so please provide details.

PSPO’s need to accommodate access to land without restriction under the Animal Welfare Act 2006 excluded from the PSPO would also be:
(a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
(b) is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance; or
(c) has a disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

7. Could a particular group be affected differently in either a negative or positive way?

(Positive – it could benefit, **Negative** – it could disadvantage, **Neutral** – neither positive nor negative impact or **Not sure?**)

	Type of impact, reason & any evidence
Disability	Positive impact if dog is registered under one of the exceptions in section 6.
Race (including Gypsy & Traveller)	Neutral
Age	Positive: Young person’s taught responsible dog ownership by imposition of PSPO
Gender Reassignment	Neutral
Sex	Neutral
Sexual Orientation	Neutral
Religion/Belief	Neutral
Marriage and Civil Partnership	Neutral
Pregnancy and Maternity	Neutral

8. Could other socio-economic groups be affected e.g. carers, ex-offenders, low incomes?

Yes Those on low incomes for persistent behaviour which leads to an order resulting in the issue of a £100 fixed penalty notice or being taken to court and receiving a fine of up to £1000.

9. Are there any human rights implications?

Delegation from the Human rights legislation due to the proportionate use of the legislation and interests of public safety

10. Is there an opportunity to promote equality and/or good community relations?

Consultation with Police and community groups including wards and members and the general public Publication of proposal on Council website and potential press release
The change can result in a positive impact on the residents and wider population in supporting a cleaner healthier environment to live, work and rest in and lead to a better quality of life.

11. If you have indicated a negative impact for any group is that impact legal (not discriminatory under anti-discrimination legislation)?

N/A The impact would be legal and non discriminatory.

12. Is any part of this policy/service to be carried out wholly or partly by contractors?

No

13. Is a full impact assessment required?

No

14. Date by which a full impact assessment is to be completed and actions

Please note that you should proceed to a Part 2, the full Equality Impact Assessment if you have identified actual, or the potential to cause, adverse impact or discrimination against different groups in the community.

We are satisfied that an initial screening has been carried out and a full impact assessment **is / is not required*** (please delete as appropriate).

Completed byDate.....

Countersigned by..... Date.....

This EIA form will then be published on the Council website

Agenda Item 9



Licensing and Regulatory Committee	Wednesday, 19 July 2017	Matter for Information and Decision
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Title: Environment and Licensing Enforcement Policy

Author(s): Stephen Glazebrook (Interim Head of Community Services)

1. Introduction

The purpose of this report is to inform members of a revised Environmental and Licensing Enforcement Policy providing Enforcement Officers to undertake action under the Clean Neighbourhoods and Environment Act 2005 and the Anti Social Behaviour and Policing Act 2014.

To extend the Powers of the Licensing Enforcement Officer to undertake enforcement under the Anti Social Behaviour and Policing Act 2014 and serve Community Protection Notices under the Act.

To adopt all measures under the Clean Neighbourhoods and Environment Act 2005 which have not been enacted under any other report or Policy.

2. Recommendation(s)

- 2.1 Members are asked to approve the use of the Environmental and Licensing Enforcement Policy 2017 attached at Appendix 1.
- 2.2 Members are asked to approve the extension of the powers of the Licensing Enforcement Officer under the Anti Social Behaviour and Policing Act 2014.
- 2.3 Members are asked to approve the Clean Neighbourhoods and Environment Act 2005 attached at Appendix 2.

3. Information

- 3.1 The Environmental Health and Licensing Policy was last adopted in 2008 and was due to be reviewed in 2013.

Since 2008 there have been a number of legislation changes passed which have not been incorporated into the Policy.

- 3.2 This Policy supports the Council's corporate priorities: the reduction of crime and disorder and protecting the environment by providing a framework for undertaking various levels of enforcement as a means of reducing environmental crime and tackling crime and disorder.

Background Documents:

Appendix 1: Copy of Environmental Health and Licensing Enforcement Policy 2017
Appendix 2: Clean Neighbourhoods and Environment Act 2005

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Tel: (0116) 257 2674

Implications Environment and Licensing Enforcement Policy	
Finance	No significant financial implications.
Chris Raymakers Finance and Accountancy Manager	
Legal	It is essential to update the relevant policies to ensure that the Council has the powers necessary to take enforcement action.
Anne Court Director of Services / Monitoring Office	
Corporate Risk(s) (CR)	<input checked="" type="checkbox"/> Reputation Damage (CR4) Failure to take enforcement action could damage the Council's reputation. <input checked="" type="checkbox"/> Regulatory Governance (CR6) The policy must include any changes in legislation. <input checked="" type="checkbox"/> Failure to Respond to a Significant Incident (CR7) Without the necessary policies in place the Council may not be able to respond to a significant incident.
Stephen Glazebrook Interim Head of Community Services	
Corporate Priorities (CP)	
Stephen Glazebrook Interim Head of Community Services	<input checked="" type="checkbox"/> An Inclusive and Engaged Borough (CP1) Having the relevant policies in place will contribute to an inclusive and engaged Borough. <input checked="" type="checkbox"/> Effective Service Provision (CP2) The updated polices will support effective service delivery. <input checked="" type="checkbox"/> Green & Safe Places (CP4) The enforcement policies will contribute to a green and safe Borough.
Vision & Values (V)	<input checked="" type="checkbox"/> Accountability (V1) The updated policies will ensure that the Council has the necessary powers in place making it more accountable for its actions. <input checked="" type="checkbox"/> Respect (V2) The enforcement policies will assist the Council in delivering a safer and cleaner Borough which will show respect to all residents. <input checked="" type="checkbox"/> Customer Focus (V5) Having the enforcement policies in place will ensure that the service delivers a customer focussed service.
Stephen Glazebrook Interim Head of Community Services	
Equalities & Equality Assessment(s) (EA)	See below.
Stephen Glazebrook Interim Head of Community Services	<input checked="" type="checkbox"/> Initial EA Screening (<i>Appendix 3</i>) <input type="checkbox"/> Full EA Assessment

Not Applicable



Environmental and Licensing Enforcement Policy

Version control

	Date	Circulated:	Notes
1.	18/1/17	18/1/17	Draft
2.	6/7/17	19/7/17	Committee
3.			

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1.0 Introduction

This document sets out what residents, businesses and the community as a whole can expect from the Environment and Licensing Enforcement Officers. It commits us to good enforcement policies and procedures and to the provision of the principles of good regulation.

The primary function of the Environment and Licensing Enforcement Officers enforcement work is to protect the public and the environment. Our priorities are to improve the cleanliness of the district and promote a safer, cleaner, greener environment.

We recognise that the effectiveness of legislation depends upon the compliance of those regulated and that most individuals and businesses want to comply with the law. We will therefore assist and advise and educate wherever possible, whilst taking firm action against those who flout the law, act irresponsibly or cause or permit others to do so.

Oadby and Wigston Borough Council's Community Service has formally adopted the Government's Concordat on Good Enforcement; we thereby commit ourselves to the following policies and procedures:

1.1 The Council's Vision and Corporate Plan priorities

Our vision – What we want to achieve:

We want to create a positive image of the Borough which supports people, businesses and investment in the area, and improves confidence, pride and dignity so that everyone can enjoy a good quality of life in their neighbourhood.

Our values – The way we will work **Quality • Respect • Openness**

Two of Oadby and Wigston Borough Council's Corporate Priorities which relate to the work undertaken by the Environmental Health and Licensing Team are:

Reduce Crime and Disorder; and
Protecting the Environment.

1.2 Scope of the Policy

This policy supports the council's corporate priorities: the reduction of crime and disorder and protecting the environment by providing a framework for undertaking various levels of enforcement as a means of reducing environmental crime and tackling crime and disorder.

Research suggests that there are strong links between the environment and quality of life and it has also been acknowledged that if left unchecked, low-level environmental crime can escalate to more serious criminal activity.

Reducing environmental crime is also vital to mitigating the 'broken window' effect, where environmental issues can attract an increasing deterioration through littering, abandoned vehicles, fly tipping of waste, fly posting, graffiti, vandalism, arson and other forms of anti-social behaviour.

Enviro-crime can also have a detrimental effect on the local economy and on tourism.

Accordingly, this policy details how the Council will address the following issues:-

- Fly tipping (illegal deposit of waste)
- Duty of care offences
- Litter (on both public and private land)
- Dog related offences
- Graffiti
- Nuisance Vehicles (Commercial sales and street repairs)
- Abandoned Vehicles (not poorly parked vehicles)
- Illegal signs (on street furniture)
- Compliance with Waste Transfer legislation and Duty of Care (commercial and domestic)
- Encouraging compliance to Voluntary Codes of Practice regarding litter from businesses.
- Unauthorised transportation of controlled waste.
- Smoking in a smoke free place
- Failure to display no smoking signage.
- Breaches of Public Space Protection Orders and other bye-laws.

2.0 Regulatory Framework

All enforcement activity will be undertaken with due regard to the provisions of the relevant legislation:

1. Environmental Protection Act 1990, Part II, Section 33, 34, 46, 47, 47ZA, 47ZB and 59
2. Environmental Protection Act 1990 – Part III Control of Statutory Nuisances
3. Environmental Protection Act 1990 – Part IV – Litter, section 87 (1), Section 88(1)
4. Environment Act 1995 – Section 108
5. Control of Pollution Act 1974, Section 91
6. Control of Pollution (Amendment) Act 1989, Section 5 and 5B
7. Refuse Disposal (Amenity) Act 1978, Section 6 and 8
8. Health Act 2006, Section 6 (5), 7 and 9
9. Anti-Social Behaviour Act 2003, Section 43, 43a and 43b
10. Clean Neighbourhood and Environment Act 2005 Section 55 (1),(3) or (4)
11. Clean Neighbourhood and Environment Act 2005 Section 3,4 and 6 (1)
12. Crime & Disorder Act 1998
13. ASB Crime and Policing Act 2014, S43-S75
14. Also, any Regulations, Orders, Bylaws or other subsidiary legislation made under the above and any enactments amending or replacing the same.
15. Authorisation to issue Fixed Penalty Notices (FPN's) for the following:
 - i. Nuisance Parking
 - ii. Litter
 - iii. Failure to comply with CPN
 - iv. Failure to comply with PSPO
 - v. Graffiti and Fly-posting
 - vi. Failure to Produce Authority (Waste Transfer Note)
 - vii. Failure to Furnish Documentation (Waste Carriers License)
 - viii. Offences in relation to Waste Receptacles
 - ix. Offences under Dog Control Orders
 - x. Smoking in a smoke free place
 - xi. Failure to display no smoking signs

3.0 Equalities Statement

At Oadby and Wigston Borough Council we are committed to equality and diversity in everything we do and this policy will be administrated in accordance with this.

The Council strives to provide the best possible services to the diverse communities of Oadby and Wigston Borough. We aim to be a community leader and an effective corporate body which recognises and responds to the different needs of our community - those who visit, live or work in our district. To meet those needs we aim to develop and maintain a safe and sustainable community for everyone.

Oadby and Wigston Borough Council uses the Equality Framework for Local Government as a tool to ensure its continuous development in providing fair and equitable services and also meet its legal duty under the Equality Act 2010

The Corporate Equality and Inclusion policy states that the Council is committed to ensuring that individuals and groups representative of the 'Protected Characteristics' are not discriminated against and that there is equality of opportunity for all people taking into account their individual needs.

4.0 The Enforcement Concordat- General Principles

The Enforcement Concordat has been written and developed in accordance with the Cabinet Office, Enforcement Concordat (1998).

4.1 The Enforcement Concordat

The National Enforcement Concordat seeks to disseminate good practice and the principles of good enforcement. It is, therefore, incumbent upon any enforcing officer or agency to adopt these principles during all enforcement actions.

A summary of the provisions are as follows:-

4.2 Standards

In consultation with the three citizen's panels, community groups, partners and other interested parties, we will draw up clear standards setting out the level of service and performance that the public and businesses can expect to receive. We will publish these standards and our annual performance against our service plan.

4.3 Openness

We will provide accessible information and advice, in plain language, on the legislation that we enforce. We will be open about how we set about our work, consulting local residents, business, community groups, partners and other interested parties.

4.4 Helpfulness

We believe that education plays a big part in the work that we do; we will actively work with local schools, community groups and businesses to advice on, and assist with, compliance. We will provide a courteous and efficient service, and our staff will identify themselves by name. We will offer a contact point and telephone number to encourage further liaison. Requests for service, enquiries and complaints will be dealt with efficiently and promptly. We will strive to ensure that

wherever practicable, our activities are effectively co-ordinated to avoid unnecessary overlaps and/or delays.

4.5 Complaints about Service

We will maintain our informal and formal complaints procedures, which are easily accessible to all service users, and which explain all rights of complaint and appeal, including the likely time-scales involved.

4.6 Proportionality

We will take into account the costs of compliance, by way of offering restorative justice including litter picks for juveniles. We will also facilitate payment plans for fixed penalty notices. We will, as far as the law allows, work with businesses so that they can meet their legal obligations, without unnecessary expense. We will also gauge our activities to reflect the proportionality principles of OWBC's Corporate Enforcement Policy.

4.7 Consistency

We will carry out our duties in a fair, equitable and consistent manner. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

5.0 Who does the Policy apply to?

This policy applies to any Authorised Officer of Oadby and Wigston Borough Council.

The Council approved the following on 19th July 2017:

- delegated authority to the Corporate Director of Services to authorise officers to enforce the provision of the Clean Neighbourhoods and Environment Act 2005, where appropriate:
- delegated authority to the Corporate Director of Services to authorise officers to issue Fixed Penalty Notices (FPN's) as specified in Table 1.
- Furthermore, Council approve that an FPN may be issued by an employee of the authority who is authorised in writing to do so by the authority.
- FPN's can be issued by any person who is authorised to do so by Oadby and Wigston Borough Council. This includes outside bodies such as contractors, Police Officers, Police Community Support Officers and other accredited persons.

Additionally, all Council employees and partner agencies are encouraged to report any environmental crime they witness to the Environmental Health Team at the District Council. When the Council receives an environmental crime complaint from a 'lay person' a judgement will be made by an Authorised Officer as to whether there is a 'Public Interest' and it is proportionate and appropriate to pursue any further action.

6.0 The Responses to Environmental Crime

The following sections outline the various responses to tackling environmental crime.

6.1 Education, Publicity and Marketing

The Council will always seek to publicise the importance of environmental legislation to the general public and business community in order to seek compliance before taking formal enforcement action. The community must know and understand what standards are expected of them so that they can operate to these levels. Examples of raising awareness may include:-

- direct marketing to households and businesses, through, newspaper articles and leaflets;
- directly promoting householders 'duty of care' through awareness campaigns and education programs and leaflets;
- building relationships with schools and supporting environmental awareness within the curriculum;
- attending community events to promote environmentally responsible behaviour;
- publicising the link between environmental crime, quality of life and more serious offences (The Broken Window Effect);
- publicising the costs of tackling environmental crime;
- arranging and publicising targeted campaigns, enforcement actions and prosecutions in the local media;
- conducting road shows in public areas and at community events;
- encouraging local residents to report environmental crime to the appropriate authority;
- providing promotional 'give-a-ways' where appropriate to help reduce the potential for environmental crime – e.g. personal ashtrays, gum disposal pouches, dog 'poop scoop' bags;
- liaising with County Council Officers to promote activities and initiatives across the County;
- work with partnership agencies within the Council to promote a co-ordinated response to environmental crime (e.g. Days and Weeks of Action);
- utilise advertising space in prominent locations;
- provide up to date information on the Council's website;
- provision of informal advice, guidance and support;
- liaise with partners, businesses and landowners to design out areas that are repeatedly subject to fly tipping;

7.0 Enforcement Options

Unfortunately, education and informal advice do not always achieve voluntary compliance. Accordingly, it may be necessary for the Council to undertake enforcement action in some cases.

When the Council receives a complaint a judgement is made by an Authorised Officer as to whether there is a 'Public Interest' in pursuing any further action.

When deciding whether to prosecute, the Officer will have regard to the principles of the CPS Code for Prosecutors. This will include an evidential as well as public interest test. Where enforcement action is felt to be appropriate, the Council has the following options available:-

- Take no action
- Verbal warnings and advice
- Formal notice/warnings and advice
- Referrals to education programme
- Simple Caution

- Carry out work in default
- Seizures
- Issue a Fixed Penalty Notice
- Prosecution

7.1 Take No Action

In exceptional circumstances, contraventions may not warrant any action. This may be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community.

A decision of 'no action' may also be taken where formal enforcement is inappropriate and/or disproportionate in the circumstances, such as where a trader has ceased to trade, or where it would seriously damage the well-being of the perpetrator. Ultimately, each case will be assessed on its own merits, with due consideration given to health, safety, environmental and nuisance factors prior to a decision being made.

7.2 No Action Continued – Extenuating Circumstances - Mental or Physical Health

Enforcement action may not be appropriate where the person is suffering from a physical or mental-health related illness.

If an Officer has reasonable grounds to suspect an individual has committed an offence and the individual fits the criteria stated above they will:-

- use their professional judgement to decide which approach to undertake
- if appropriate take provisional enforcement action until further enquires have been made into the individual's health condition (medical or other evidence may be requested to confirm and should be provided by the individual in these circumstances)
- the offender (or carer) will be asked to provide any documentation which confirms this condition
- the investigating Officer will then communicate to the offender and will consider appropriate disposal taking into account the alleged offence and medical evidence
- in such cases, enforcement action can be withdrawn or suspended
- where the investigating Officer deems it appropriate, communication with the alleged offender will be with the assistance of an 'appropriate adult'.

7.3 Verbal Warnings and Advice

These will be used where appropriate as a means of resolving minor offences and technical infringements that are capable of immediate rectification and are unlikely to be repeated. Failure to heed verbal warnings or advice may result in more serious enforcement action being taken (see below). These warnings will be recorded and kept on record to assist 'repeat offending' decisions.

7.4 Formal Notice and Advice

For some contraventions, under the Antisocial Behaviour, Crime and Policing Act 2014, the offender will be sent a Community Protection Warning letter clearly identifying the offence, giving advice on how to put them right and a deadline by which to do it. Failure to comply with written warnings or advice could result in more serious enforcement action being taken. Time allowed for rectifying infringements must be reasonable, but must recognise the health, safety, environmental and nuisance implications of the contravention.

7.4.1 CPN and EPA action

A 'nuisance' means something different to 'bothersome' or an 'annoyance'. The assessment of nuisance is an objective test, taking into account a range of factors and is based on what is reasonable for the 'average' person. 'Prejudicial to health' means 'injurious or likely to cause injury to health' under section 79(7) of the Environmental Protection Act 1990. While a CPN can be issued for behaviour that may constitute a statutory nuisance, the interaction between the two powers should be considered. It remains a principle of law that a specific power should be used in preference to a general one.

7.5 Formal Notice

A Statutory Notice or a Community Protection Notice can be served to require offenders to cease contravening activities, or to give them reasonable time to rectify a contravention. The time allowed putting things right must be reasonable, but will depend on any health, safety, environmental or nuisance factors. Notices may require immediate cessation of infringing activities where these are particularly aggravating. This can be issued by means of a Community Protection Notice or via court injunctions.

7.6 Simple Caution

A Simple Caution can be considered as an alternative to prosecution. A Simple Caution will only be considered when all the appropriate criteria for a prosecution case are met, and the circumstances surrounding the offence are such that a more lenient approach than prosecuting is appropriate.

A Simple Caution must follow the criteria as laid down in the Home Office Guidelines. If a decision to offer a Simple Caution is rejected by the alleged offender, then the case shall be forwarded to the Head of Service with a recommendation to prosecute.

Use of Simple Cautions should be used in line with the Ministry of Justice Guidance Nov/2013. The Guidance states the purpose of a simple caution is:-

- i) to deal quickly and simply with less serious offences
- ii) to divert less serious offences away from the Courts
- iii) to reduce the chances of repeat offences

The Simple Caution may be used in place of court proceedings when:-

- i) the interests of justice will not be served by court action;

- ii) for offences of a minor nature not actioned following service of a Statutory Notice and where there is no risk to public health or to the environment;
- iii) a 'technical offence' has been committed and there is a need for the offence to be formally recorded

To safeguard the suspected offender's interests the following conditions must be fulfilled:-

- i) there is sufficient evidence to secure a conviction
- ii) the suspected offender must admit the offence
- iii) the suspected offender must understand the significance of a Simple Caution and agree to being cautioned

Offender's personal data will be held by Oadby and Wigston Borough Council and managed in accordance with the Data Protection Act 1998.

The Simple Caution will be kept on file for five years and may be shared within Oadby and Wigston Borough Council and with other Local Authorities in accordance with the above Act.

A Simple Caution can be taken into account when investigating the same offender for further offences and may be cited in a court of law should the offender be prosecuted in the future.

7.7 Works in Default

Local authorities have delegated powers from Parliament to enforce Statutory Notices. If they have failed to comply with it, one of these powers allows the authority to carry out works "in default" of the person(s) on whom the Notice has been served.

If the works necessary to comply with the notice are not being carried out within a reasonable time, or to a high enough standard; the Council can arrange for the works to be undertaken. The authorised Officer will specify the work needed, and then obtain a quote for the work to be undertaken.

The Officer will then make all necessary arrangements to have the work carried out. Once the work is satisfactorily completed, the Council will serve a demand (a bill) on the person or persons responsible and any required notices contained in law, to recover monies. The Council will pursue non payment through the courts if necessary.

7.8 Fixed Penalty Notices

The issuing of a Fixed Penalty Notices (FPN) for an offence represents an opportunity for the offender to discharge any liability of conviction for the offence alleged once it is paid.

In the majority of cases, where an authorised officer witnesses an offence for which an FPN can be issued, this will be done in the first instance.

A decision to issue an FPN is at the discretion of the authorised officer. Offences with aggregating features may not be appropriate for an FPN.

7.8.1 Timescales

After an FPN has been issued the offender has fourteen days to pay in full, unless payment by instalments has been agreed with the Council (see 7.8.3 below for details). If the Council does not receive payment within fourteen days then a final seven day warning letter is sent to the offender. Allowances will be made for Bank Holidays and other extenuating circumstances.

If the FPN remains unpaid the case will be sent to the Council's Legal Section who may initiate proceedings to prosecute for the original offence. The Council will always seek to pursue non-payment of FPN's through the courts where possible.

7.8.2 Repeat Offenders

FPN's are not appropriate for persistent offending. The Council may seek to prosecute repeat offenders through the Courts.

7.8.3 Instalments

If payment by instalment is agreed with the finance department, then the first instalment for a payment on an FPN must be paid within one month after the FPN has been issued. Two further instalments are then required in the two subsequent months. A letter will be sent to the offender stating what is expected and the dates by which instalments must be paid.

All FPN's paid by instalments must be paid in full within three calendar months of the date of issue.

Late payment on ANY of the three instalment dates will result in no payments being accepted thereafter. The matter will then be dealt with by OWBC Debtors department.

7.8.4 Fixed Penalty Notice Levels

For offences (listed in Table 1) the various Acts enable the Council to specify the amount of a fixed penalty. The amount of a fixed penalty is dependent upon the offence for which it has been issued and can be £50, £75, £100, £200 and £300.

7.8.5 Early/Discount Payments

The Health Act 2006 offers a discount for early payment of an FPN.

There is a standard period for payment of fixed penalties served under this legislation set at 28 days, if paid within 15 days a discount is available. Once an FPN has been issued, an authority cannot prosecute for the alleged offence if the FPN is paid within this period, and is stated on the notice itself.

7.8.6 Issuing Fixed Penalties on Private Land

Authorised officers are required to gain the permission from the landowner or occupier before they can enter private land. Upon consented entry FPN's may be issued.

This also applies in respect of privately-owned land to which the public are entitled to have access. Oadby and Wigston Borough Council is not permitted to issue FPN's on private land where permission has not been granted or has been refused.

8.0 Education (Householders Duty of Care)

From September 2015 where an authorised officer of the council investigated a breach of householder's duty of care the option, is available to offer an education programme instead of seeking to prosecute. Strict criteria of who is offered the course must be complied with to ensure consistency of those offered the diversionary course and those put forward to prosecution.

The course will be offered to those who have admitted to failing in their duty of care by not checking that they have a waste carriers licence but thinking they had paid someone to remove their waste correctly.

To be offered a place on the course the investigating/interviewing officers must be satisfied that they have given their waste to an unlicensed waste carrier which they were unaware was an offence. Proof of this should be given at the interview for example, phone number they contacted, leaflet used. Caution should be taken with those who state it was a "white van man" and provide no details as potentially, the offence may have been committed by themselves, their partner, friend or a family member. The course can be offered along with a Community Protection Warning Notice.

9.0 Prosecution

9.1 Purpose

The use of the Criminal Justice System to instigate a prosecution is an important part of enforcement. It aims to punish criminal activity, to avoid a recurrence and to act as a deterrent to others.

The Council recognises that the initiation of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. The Council adopts the Crown Prosecution Service's Codes of Practice when considering a case. Such decisions about whether to prosecute will be taken after full consultation with the Council's Legal Section.

Prosecution should in general (though not exclusively) be restricted to:-

- those persons or companies who blatantly disregard the law or previous warnings
- those persons who refuse to achieve the basic minimum requirements for legal compliance or where there are grossly inadequate conditions especially where previous warnings or advice had been given
- obstruction of Officers
- as a result of a serious breach of legislation
- when there is unwillingness on behalf of the company to adequately deal with identified legal contraventions
- failure to comply with statutory notices

9.2 Sufficiency of Evidence

A prosecution will not be commenced or continued by the Council unless it is satisfied that there is a realistic prospect of conviction.

If the case does not pass this evidential test, the case will not go ahead to prosecution. Any prosecution should ensure any additional areas of legislation are actively pursued which offer further control measures. These could be Community Behaviour Orders (CBO) Proceeds of Crime Act (POCA) or other legislation deemed to be appropriate.

Where there is a realistic prospect of conviction, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute will usually depend on the seriousness of the offence and/or the circumstances of the offender.

9.3 Public Interest Factors

The Council will consider the following factors in deciding whether or not to prosecute:-

- environmental effect of the offence
- foreseeability of the offence or the circumstances leading to it and the offender's ability to understand the factors involved
- intent of the offender, individually and/or corporation
- history of offending
- attitude of the offender
- the deterrent factor as a result of prosecution
- personal circumstances of the offender

The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

9.4 Instigating Legal Proceedings

The Service head can instigate legal proceedings and issue Simple Cautions. Prior to initiating a prosecution, the Service head will consult with the appropriate Portfolio Holder. The matter will then be passed to the Council Solicitor for consideration.

9.5 Regulation of Investigatory Powers Act 2000 (RIPA)

This policy will adhere to the Councils RIPA Policy.

9.6 Recovery of Costs

9.6.1 Recovery of Costs upon Conviction

The Council will endeavour to recover reasonable costs through cases prosecuted. A schedule of cost will be prepared by the Enforcement Officers. Costs will normally include file preparation, travel, and attendance at interviews under caution and clean up costs.

9.6.2 Notices and Orders

The Council is entitled to make such charge as is considered appropriate to recover reasonable costs incurred in respect of certain formal enforcement actions for the making of notices and orders.

9.6.3 Emergency Remedial Action (Work in Default)

Work in default is a power given to the Council, to ensure that work is carried out to a property. If the recipient of a statutory notice does not do the work required by the notice, the Council is able to employ a contractor to enter the property and carry out the work itself. If the Council has to do this, it will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.

It should be noted that carrying out work in default does not preclude the Council from further formal action including issuing a Simple Caution or prosecuting the offender.

9.6.4 Methods of Recovery of Costs

There are various methods by which the Council can recover the costs, including addition of interest, incurred in serving notices or orders or carrying out work in default including:

a) Sundry Debtor Method

Using this method the Council will send the appropriate person an invoice requesting payment. If this is not paid within three weeks, a reminder invoice is sent requesting payment immediately. If the invoice is not paid within two weeks of the reminder being sent, the matter, depending on the size of the debt, will be referred to a Debt Agency or to the Council's Legal Services Section for the consideration of County Court action.

b) Charge on the Property

In certain circumstances the Council will seek to put a charge on the property. This means that when the property is sold, the Council will expect to be paid the amount of the debt. This is not generally a preferred method as it is slow and depending on the equity in the property, the Council may not get its money back at all. Interest may also accrue on the outstanding debt. This method of debt recovery may be instigated when the debt is in excess of £1000.

9.7 Levels of Enforcement Action to Take

9.8 Companies and Individuals

Prosecutions will be considered against an individual responsible for the offence. Where a Company is involved, it will be general practice to prosecute the Company where the offence took place as a result of the Company's activities. However, the Council will also consider any involvement of the Company employee.

Action may also be taken against such companies (as well as their employees) where it can be shown that the offence was committed with their consent, was due to their neglect and / or they 'turned a blind eye' to the offence or the circumstances leading to it.

9.9 Referrals to another Agency

On occasion an investigation may be more appropriately dealt with by means of referral to another agency, e.g. The Environment Agency.

10.0 Enforcement and Young People

10.1 Overview

Under the Clean Neighbourhoods and Environment Act 2005, an FPN can be issued to anyone over the age of ten. However, in accordance with Defra guidance the Council will adopt special procedures for enforcing against young people.

This will ensure that the Council are acting in accordance with their duty under the Children Act 2004; which requires children's service authorities, including local authorities and police, to discharge their functions having regard to the need to safeguard and uphold the welfare of children.

10.2 Procedure for Enforcing Against 12-17 Year Olds

Young people over the age of ten are legally liable for their actions. However Oadby and Wigston Borough Council Authorised officers will deal with juveniles aged 12 years and over in the way outlined in this policy when they see offences committed. It is important that the authorised officer obtains an accurate date of birth of the young person when issuing a FPN. For the purpose of this policy, juveniles are classed as anyone aged 17 and under.

For litter and graffiti offences juveniles will be offered a chance to attend a one hour supervised litter picking session or one hour graffiti removal session, as a way of discharging the FPN and thus negating the need for payment to be made.

This offer will be made once the FPN has been issued and returned to the Council. The administrator will send a letter to the parent/guardian of the juvenile with information of the date and time of the alleged offence and the allocated litter picking/graffiti removal session. The council works with volunteer organisations and holds regular litter picking sessions at varying locations across the District.

Juveniles who are offered a litter pick/graffiti removal session and do not attend will be offered one second session as a final chance to undertake restorative justice before their details are referred to the Youth Offending Team for further action.

11.0 Partnership Working

Key to successfully reducing enviro-crime is partnership working. Through partnership working the aims of this Policy can be shared and awareness raised, through consistent information and advice.

In order to seek the most effective operation of this Policy, the Council's Officers will work in partnership with, amongst others:-

- All District Elected Members
- National Probation Service for Leicestershire
- Neighbourhood Wardens
- Local Schools
- Youth Offending Team
- Youth Services

- Oadby and Wigston Crime and Disorder Reduction Partnership
- Leicestershire Police
- Leicestershire Fire and Rescue
- Leicestershire Social Care
- Leicestershire County Council
- Local Parish Councils and Residents Groups
- Trading Standards Team
- Environmental Health Team
- Safer Neighbourhood Teams
- Neighbouring Local Authorities
- Tidy Britain (Environmental Campaigns)
- Environment Agency
- Driving Vehicle Licensing Association (DVLA)
- Driver and Vehicle Standards Agency (DVSA)
- Network Rail
- Registered Social Landlords

12.0 Human Rights

Human Rights Act 1998

All potential enforcement activity will be considered with due regard to its legitimacy and proportionality and the provisions of the above legislation, which derives from the European Convention on Human Rights.

13.0 Complaints

13.1 Informal complaint

To make an informal complaint against a decision by the Council or its Officers you can contact us on **0116 257613** or email:

http://www.oadby-wigston.gov.uk/contacts/customer_services

We will record your complaint and then the relevant Department/Service will look at your concerns and reply to you within 15 working days. This is often the quickest way to put things right.

Even if we are unable to resolve your concerns, perhaps because of the law, we will be able to explain the reason(s) for this.

If the department is unable to resolve a complaint to your satisfaction informally, then you can proceed with the formal procedure outlined below. In the first instance if you have an issue with a neighbour. Attempt to explain the issues you have. Quite often a person or business may not be aware of the issue or the distress they may be causing. This approach creates good neighbourly relations and good relations. This is often the quickest way to put things right.

If this does not resolve a complaint to your satisfaction informally, then you can proceed with the formal procedure outlined below.

13.2 Formal complaint

The quickest and easiest way to make a **formal** complaint is to use our [online complaints form](#).

You can also email us, write to us or use one of our pre-printed complaints forms. These can be picked up from one of our offices, or we can send you one.

If you are unable to write or type, we can record the complaint in your own words for you.

We will acknowledge receipt of your formal complaint within five working days and we aim to reply in full within 15 working days.

Formal - Stage 1: The complaint is handled by a Head of Service, or nominated officer, who will investigate and reply to you.

Formal - Stage 2: If you remain dissatisfied after the Stage 1 reply the Managing Director will investigate and reply to you. If you remain unhappy following the Managing Director's reply, further progress depends on the nature of your complaint. Most complaints are referred to the [Local Government Ombudsman](#).

However, as a social housing provider some housing related complaints will be dealt with by the [Housing Ombudsman](#).

The Managing Director's reply will tell you how to take your complaint further.

Both the Local Government Ombudsman and the Housing Ombudsman expect you to have exhausted our complaints procedure before approaching them.

If your complaint is about a social housing issue, the Housing Ombudsman requires you to go through a Designated Person* before referring your complaint. Otherwise, you have to wait eight weeks after a Stage 2 reply before the Housing Ombudsman will consider your complaint.

*Designated Persons are defined in the Localism Act as an MP, a local councillor or a designated tenant panel.

Data protection: The information you supply will be used to enable this request or notification to be carried out and will be handled in accordance with the Data Protection Act 1998. For more information please see our [privacy notice](#).

Appendix 1- Fixed Penalty Notice Offences

Code	Offence	Legislation	Fixed Penalty	Reduction due to early payment payable within 7 days unless stated	Max Penalty on Conviction
OWBC1	Leaving Litter	s87(1)/s88(1) Environmental Protection Act 1990	£80 payable within 14 days of issue	£50	£2,500
OWBC2	Failure to comply with Dog Control Order	s55, (1),(3) or (4) Cleaner Neighbourhoods and Environment Act 2005	£80 payable within 14 days of issue	£50	£1000
OWBC3	Nuisance Parking	s3, s4 & s6(1) Clean Neighbourhoods Environment Act 2005	£100 payable within 14 days of issue	£60	£2,500
OWBC4	Fly-posting or Graffiti	s43, s43A & s43B Anti-Social Behaviour Act 2003	£80 payable within 14 days of issue	£50	Variable
OWBC5	Failure to comply with CPN	S52 Anti-social Behaviour Crime and Policing Act 2014	£100 payable within 28 days of issue	£75 payable within 14 days of issue	Variable
OWBC6	Failure to produce waste disposal documentation	s34(5), s34(6) & s34A Environmental Protection Act 1990 & EP. (Duty of Care) Regs 1991 as amended	£300 payable within 14 days of issue	£180	£5,000 (or, on indictment, an unlimited fine)
OWBC7	Failure to produce authority to transport controlled waste	s5/5B - Control of Pollution (Amendment) Act 1989	£300 payable within 14 days of issue	£180	£5,000
OWBC8	Failure to comply with waste disposal receptacles notice	s46/47/47ZA/47ZB Environmental Protection Act 1990	£100 payable within 14 days of issue	£60	£1,000
OWBC9	Smoking in Smoke Free Place	S7 & s9 Health Act 2006	£50 payable within 28 days of issue.	£30 if paid within 15 days	£200
OWBC10	Failure to display No Smoking signs	S6(5) Health Act 2006	£200 payable within 28 days of issue..	£150 if paid within 15 days	£200

Appendix 2

THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 (“the Act”)

OVERVIEW

The Act provides local authorities with more effective powers to tackle poor environmental quality and anti-social behaviour. In particular the Act includes sections on nuisance and abandoned vehicles, litter, graffiti, waste, noise and dogs.

Many of the provisions relate to powers not duties. Councils need to decide which powers they will use.

COMMENCEMENT

All provisions of the Clean Neighbourhoods and Environment Act 2005 are now in force

AREAS

Areas covered by the Act include: -

1. Abandoned and Nuisance Vehicles
2. Litter and Refuse
3. Defacement (graffiti and fly-posting)
4. Waste
5. Dog Control Orders
6. Noise
7. Statutory Nuisance (light and insects)
8. Abandoned Trolleys

DEFRA has issued guidance on the above to help Councils put the provisions into practice.

DEFRA has also issued guidance on the new Code of Practice for Litter and Refuse, and on the fixed penalty regime as altered by the 2005 Act.

DEFRA has developed the approved training course that will need to have been attended by any personnel that are to be authorised to issue fixed penalty notices on behalf of a parish council.

MODEL FORMS

DEFRA has developed the following example forms as part of its guidance to assist local authorities in using the legislation: -

- A Model Fixed Penalty Notice
- B Model Litter Clearing Notice
- C Model Litter Abatement Notice
- D Model Street Litter Control Notice

1. Abandoned and Nuisance Vehicles (Sections 3-9)

Background

Local authorities have a duty to remove abandoned vehicles under the Refuse Disposal Amenity Act 1978 and this duty remains. However, the Act amends the 1978 Act creating new powers for local authority authorised officers to issue fixed penalty notices in respect of abandoned vehicles. It also helps speed up the process of disposing of abandoned vehicles.

The Act creates two new nuisance-parking offences, and allows authorities to issue fixed penalty notices for these offences.

Nuisance Parking

Offences

- These offences are aimed at businesses that use the public road as a 'showroom' and people who use the road as a 'workshop'.
- Section 3 of the Act makes it an offence for a person to park motor vehicles on a road or roads, where the vehicles are parked merely in order to be sold. The offence is committed if there are two or more vehicles within 500 metres of each other. The maximum fine on summary conviction is level 4 (currently £2,500) on the standard scale;
- Section 4 makes it an offence to carry out "restricted works" to vehicles on a road. "Restricted Works" covers repair, maintenance, servicing, improving or the dismantling of a motor vehicle or any part or accessory. The maximum fine is level 4 on the standard scale on summary conviction.

Powers

- Section 6 of the Act enables authorised officers to issue a fixed penalty notice for offences under section 3 (exposing vehicles for sale) and section 4 (repairing a vehicle on the road);
- Section 7 provides an authorised officer with the power to require the name and address of an offender if the officer proposes to give him a penalty notice.

Fixed Penalties

- Section 6 also provides that the fixed penalty is £100, although the Secretary of State can alter that amount and an authority can accept a lesser amount;
- Section 8 governs the use of fixed penalty receipts which must be used for specified purposes.

Abandoned Vehicles

The Act creates new fixed penalty powers in respect of abandoned vehicles, which are aimed at making it easier and less costly for local authorities to deal with abandoned vehicles. It achieves this by amending the Refuse Disposal (Amenity) Act 1978 (which makes it an offence to abandon a motor vehicle).

- Fixed penalties for Abandoning Vehicles
 - Section 10 of the Act inserts after section 2 of the 1978 Act three new sections - 2A, 2B and 2C;
 - The new section 2A gives an authorised officer the power to issue a fixed penalty notice in respect of an offence of abandoning a vehicle;
 - Section 2B enables an authorised officer to require the name and address of the person to whom he proposes to issue a fixed penalty notice;
 - Section 2C enables local authorities to use the receipts from these penalties for the purposes of their functions under the 1978 Act and sections 99 to 102 of the Road Traffic Regulation Act 1984, and for other functions as specified in regulations.
 - Making it Easier for Local Authorities to Deal with Abandoned Vehicles
 - Section 11 of the Act amends section 3 of the 1978 Act. Previously if a vehicle that appeared to be abandoned was found on private land, a notice had to be served on the occupier of the land. If the occupier did not respond, the local authority had to wait 15 days before removing the vehicle;
 - Where the vehicle was on a private road, it was difficult to identify the occupier. Section 11(2) removes the requirement to serve a notice on the occupier of land where the vehicle is on a 'road';
 - Section 3(5) of the 1978 Act required a local authority to affix a notice to a vehicle 24 hours prior to removal where it was considered to be in such a condition that it ought to be destroyed. The 24-hour notice sometimes attracted instances of anti-social behaviour such as vandalism and arson;
 - The Act amends this, enabling local authorities to immediately remove any vehicle in such a condition if they think it has been abandoned;
 - Section 12 of the Act amends section 4 of the 1978 Act by removing the requirement to wait for the expiration of a valid licence before an abandoned vehicle can be disposed of by an authority. This allows any vehicle that is only fit for destruction to be destroyed immediately - thus saving on storage costs.

- Have Regard to Guidance
 - Authorities are required to have regard to guidance given by the "appropriate person" when exercising their functions in relation to the removal and disposal of abandoned vehicles.

2 Litter and Refuse (Sections 1827)

Background

The Environmental Protection Act 1990 (EPA) governs much of the law on litter and refuse and the Act makes amendments to this Act. SLDC is a Principal Litter Authority under the 1990 Act. Section 87 of the EPA 1990 makes it an offence to drop litter and section 88 allows litter authorities to issue fixed penalties for an offence under the section. The Act amends section 88 so that Parish Councils are now litter authorities who can issue fixed penalty notices.

The Act introduces a Litter Clearing Notice regime (which replaces Litter Control Areas) and extends the application of Street Litter Control Notices.

Changes

2.1 Dropping Litter

- Section 87 (places where it is an offence to drop litter) of the Environmental Protection Act 1990 has been widened by section 18 of the Act;
- Broadly, it is now an offence to drop litter in any place in the area of a Principal Litter Authority which is open to the air; This will include private land, rivers, ponds and lakes;
- Coastal local authorities now have the power to prosecute the dropping of litter on beaches;
- The Act confirms that cigarette butts and discarded chewing gum are litter.

2.2 Fixed Penalty Powers for Dropping Litter

- The Act now allows a local authority to specify the amount of a fixed penalty payable in its area - within a range specified by regulations. The previous position was that the Secretary of State specified the amount payable. The Secretary of State still has the power to set the range from which an authority can choose (see FPN Guidance Note and table);
- The Act now provides that all Parish and Community Councils are litter authorities. This means that their authorised officers have the powers to issue FPNs;

- The Act enables litter authorities to employ persons other than their own employees to issue the FPNs - e.g. third party contractors (subject to background checks, suitability, training etc);
- Note that guidance by DEFRA provides that people new to issuing FPNs (including Parish/Community Councils) must attend training courses and reach a certain standard before they start using their new powers.

2.3 Litter Clearing Notices

- Litter Clearing Notices replace the previous Litter Control Area system which was rarely used by authorities (and thus section 90 of the 1990 Environmental Protection Act is repealed);
- Under the previous system an area had to be designated as a Litter Control Area before a Litter Abatement Notice could be served;
- Now there is no need to designate a Litter Control Area before a Litter Clearing Notice can be served;
- The Act introduces sections 92A, 92B and 92C to the 1990 EPA;
- These new sections allow Principal Litter Authorities to serve Litter Clearing Notices on businesses and individuals obliging them to clear litter from their land;
- The Litter Clearing Notice can be served on any land which is open to the air which in the opinion of the authority is defaced by litter or refuse so as to be detrimental to the amenity of the locality (Section 92A (1) and (2));
- The newly introduced section 92C makes it an offence to comply with a Litter Clearing Notice punishable by fine up to level 4 (£2500) on the standard scale;
- As an alternative to prosecution, the new section 94A introduces a fixed penalty notice regime where someone fails to comply with a Litter Clearing Notice;
- The Litter Clearing Notice can specify the standard to which the land must be cleared and a specified period within which to clear it (not less than 28 days);
- If the land is not cleared satisfactorily the Principal Litter Authority can enter and clear the land and recover the expense of doing so;
- Only officers authorised in writing by the Principal Litter Authority can issue these fixed penalties. It does not extend to officers outside the employment of the authority (i.e. contractors can't be used here).

2.4 Street Litter Control Notices

- Sections 93 and 94 of the EPA 1990 provide local authorities power to tackle street litter generated further to activities on adjacent premises; This is intended to deal with food and drink packaging and other litter generated by eating 'on the go' as well as litter from cash points and lottery tickets dropped outside shops;
- Street Litter Control Notices can be served by a Principal Litter Authority requiring businesses to clean up the litter and implement measures to prevent the land from becoming defaced again;
- The Act simplifies and extends the existing system so as to allow local authorities to use Street Litter Control Notices where mobile operations such as burger vans are causing problems;
- Street Litter Control Notices provide an enforcement mechanism to place responsibility on to owners and businesses that are contributing to the problem;
- Failure to comply with the requirements specified in a Street Litter Control Notice is an offence punishable by fine up to level 3 on the standard scale (£1000);
- Fixed Penalty Notices can be issued as an alternative to prosecution;
- Only authorised officers in the employ of the Principal Litter Authority can issue these fixed penalty notices. It does not extend to authorised officers employed by contractors).

2.5 Distribution of Free Literature

- The Act introduces a new power for Principal Litter Authorities to control the distribution of free literature;
- Principal Litter Authorities now have the power to designate areas within which it is an offence to distribute free literature;
- Distribution within a designated area without consent is punishable by fine up to level 4 (currently £2500) on the standard scale;
- Fixed penalty notices may be issued as an alternative to prosecution (see table at end of this report);
- Principal Litter Authorities are allowed to charge a fee for issuing a consent;• The new section lays down a procedure which Principal Litter Authorities must follow when they want to designate an area under the section (public notice of intention to make Order, consideration of objections, publish on website etc);
- There is a specific exemption from the offence of distributing within a designated area for political, charitable or religious purposes;

- If a person is found to be distributing free literature in a designated area without consent, an authorised officer may seize all or any of the material.

2.6 Public Registers

- Principal Litter Authorities (other than a County Council or Joint Board) must under section 95 maintain a register containing copies of all Street Litter Control Notices and all Designation Orders;
- This must be kept for so long as they are in force;
- They must be available for public inspection at all reasonable times free of charge and copies provided on payment of a reasonable charge.

3. Defacement (Graffiti and Fly-Posting) (Sections 28-34)

Background

Under sections 48 to 52 of the Anti Social behaviour Act 2003, local authorities could issue graffiti removal notices on the owners of "relevant surfaces" requiring the removal of graffiti within 28 days. Relevant surfaces include the surface of structures on any street and the surface of any land owned by a statutory undertaker.

Further, under section 224 of the Town and Country Planning Act 1990, it is an offence to display advertisements which contravene section 220 of the 1990 Act. This was used for to prosecute persons guilty of fly posting.

The Act amends the operation of the existing legislation renaming graffiti removal notices as defacement removal notices. It also allows defacement removal notices to be served in respect of fly posting. Further, since Parish Councils now qualify as litter authorities (see **2. Litter and Refuse**), they are now able to issue fixed penalty notices for relevant offences described in the 2003 Act. This includes fixed penalties for fly posting under the 1990 Town and Country Planning Act above – however under the new section 43A(2) they are required to adopt the amount specified by the superior local authority.

The defence available to the beneficiaries of fly posting under section 224 of the Town and Country Planning Act (undertaken without consent) has been removed.

Changes made by the Act

3.1 Defacement Notices

Section 31 amends the 2003 Act by extending the application of graffiti removal notices to cover illegal advertising (fly posting);

Amendments to the 2003 Act re-name these notices as "defacement removal notices".

3.2 Amendments to Town and Country Planning Act 1990 Fly Posting Defence

- Section 224 of the 1990 Act provides that it is an offence to display an advertisement in contravention of regulations made under section 220 of the 1990 Act. A person found guilty can be fined up to level 4 on the Standard Scale (£2,500);
- Until now it has been difficult for local authorities to prosecute under this section unless the person displaying the advertisement was identifiable. The difficulty was the defence available for an owner of the land or a person benefiting from the advertisement where he proves that the advertisement was displayed without his knowledge or consent;
- The Act (section 33) has amended the defence in section 224 by removing the obligation for a local authority to prove that the person consented to the display of an advertisement in contravention of the regulations;
- This makes it more difficult for the beneficiaries of fly posting to avoid prosecution by simply claiming they never consented to the advertisement.

3.3 Recovery of Costs

- Section 34 of the Act has introduced provisions enabling a local authority to recover the costs incurred in removing or obliterating the illegally displayed posters or placards;
- Subsection (3) allows local authorities to enter both occupied and unoccupied land to remove posters or placards;
- These costs are recoverable from the person who displayed the poster or placard, or caused it to be displayed, or if they are not able to be identified, from the person whose goods, services or concerns are publicised;
- This means the beneficiaries of the fly-posting can be pursued - which was not possible before the amendments made by the Act.

DEFRA Guidance

Local authorities using the powers should have regard to DEFRA's guidance which is available from their website. Points from the guidance include: -

- Local authorities should try to enter into partnership arrangements with companies who are likely to be affected by the widening of local authority's powers in this area;
- The local authority should identify the local companies likely to be affected and make contact with them to inform them that the authority has powers in this area;

- Local authorities should be sympathetic to these companies and attempt to agree timetables for removal of graffiti/fly posting. Defacement Removal Notices should be a last resort;
- But companies who own a lot of property which is defaced by graffiti and fly posting should be clearing this as part of their general maintenance programmes;
- Requests for graffiti and fly post clearing should be necessary and proportionate;
- A local authority should consider issuing a notice where it can demonstrate it has made reasonable attempts to contact the owner of the affected property and enter into a voluntary partnership agreement – and the owner has failed to respond;
- The procedure set out in the DEFRA Guidance for issuing a notice should be followed;
 - Local authorities should comply with DEFRA's cleaning guidelines guidance;
 - Recovery of expenditure means the costs incurred in cleaning the property concerned, not overheads;
 - Invoice the company concerned and payment should be made in 60 days;
 - Fixed Penalty Notice receipts can be used for enforcement or prevention activities, educational campaigns and promotions.

4. Waste (Sections 35-54)

OWBC is a waste collection authority (but not a waste disposal authority – that is Cumbria County Council) under the Environmental Protection Act 1990.

Changes Made by the Act

4.1 Transport of Waste

- Under Section 1 of the Control of Pollution (Amendment) Act 1989, it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste within Great Britain in the course of any business of his or otherwise with a view to profit. Controlled waste is defined as household, industrial and commercial waste;
- Section 35(1) of the Act amends the 1989 Act so as to remove the defence of acting under one's employer's instructions;
- Section 37 substitutes section 5 of the Control of Pollution (Amendment) Act 1989 with new sections 5 and 5A. Under sections 5 and 5A, an authorised officer of a waste authority (e.g. district council) is able to search and seize a vehicle that he reasonably believes is being used in the commission of an offence under section 1 of the 1989 Act (transporting controlled waste without being registered);

- Under the new section 5, an authorised officer can also require any person transporting controlled waste to produce his authority to do so;
- Under the new section 5B of the 1989 Act (inserted by section 38 of the 2005 Act) fixed penalties can now be issued to a person who fails to provide his authority when asked to do so by an authorised officer;
- Only the police have the power to stop vehicles;
- The above provides waste collection authorities with greater powers to deal with persons who are fly tipping.

4.2 Deposit and Disposal of Waste Under section 33 of the Environmental Protection Act 1990 (the "1990 Act") it is an offence to deposit controlled waste on any land (Fly Tipping)

- Section 40 of the Act removes the defence previously available to a charge under this section of acting on an employer's instructions;
- Section 41 of the Act increases the penalties associated with breaches of section 33. It has been said that fines levied under this section in the past have not reflected the seriousness of the offence;
- Sections 42, 43 and 44 of the Act introduces three new sections (33A, 33B and 33C) into the 1990 Act;
- Under s33A an authority can claim the costs of investigation where they secure a conviction under section 33 (Fly Tipping);
- Under s33B where a person is convicted of fly tipping, the court now has a power to order that the costs associated with cleaning up the deposited waste be paid to the relevant waste collection authority;
- Section 33C provides that if a person is convicted under section 33, the court can order that the defendant forfeit any vehicle (in which he has rights) used to commit the offence. Forfeiture could be to the waste collection authority (i.e. the district council) if it has brought the prosecution.

4.3 Offences relating to Production of Documentation

- Under Section 34 (5) of the 1990 Act people who deal with waste (importers, producers, carriers, treaters, disposers, controllers etc) are required to make and retain and furnish documents in respect of their duties under the 1990 Act.
- A fixed penalty regime has been introduced (the new section 34A of the 1990 Act) in relation to the duty imposed by the 1990 Act to provide specific documentation upon request (see table at end of the report – fixed at £300)

- This means that a waste collection authority has the power to issue fixed penalty notices (and keep the receipts) to:-
 - Businesses that fail to produce waste transfer notes
 - Waste carriers that fail to produce their registration details or evidence that they do not need to be registered
 - For waste left out on the streets

4.4 Search and Seizure of Vehicles

- Section 46 of the Act introduces new sections (34B and 34C) into the 1990 Act
- These provide powers for waste collection authorities to search and seize vehicles connected to offences under section 33 (illegal fly tipping or waste disposal) or section 34 (the duty of care on anybody who deals with waste)
- New sections (s47ZA and s47ZB) are inserted into the 1990 Act which will empower authorised officers to issue fixed penalty notices to people who commit offences under section 46 or 47 of the 1990 Act.
- This means if people do not comply with the requirements by a waste collection authority with regard to waste receptacles, they could be issued with a fixed penalty.
- It also applies to receptacles for commercial and industrial waste

4.5 Power to require Owner of Land to Remove Waste

- Section 50 inserts section 59ZA into the 1990 Act;
- Under this a waste collection authority will have the power to serve notice on the owner of land requiring fly tipped waste to be removed;
- Previously this power was restricted to the occupier of the land;
- This will enable the authority to tackle fly tipped land where the owner has neglected the land, but where there is no occupier. It will enable landowners to be charged for removal of waste.

4.6 Waste Management Plans

- Under section 54 of the 2005 Act the Secretary of State may make regulations requiring persons to prepare plans for the management and disposal of waste created in the course of destruction and demolition;

Further guidance and detail is awaited on this particular area of the Act.

5. Dog Control Orders (Sections 55-67)

The Controls enforced by the changes to Clean Neighbourhoods and Environment Act 2005 have been superseded by the Anti Social Behaviour Crime and Policing Act 2014.

6. Noise (Sections 69-76)

Background

Sections 69 - 76 of the Act introduce new powers to deal with noisy and unattended burglar alarms.

Changes made by the Act

- Under section 69(1) a local authority may designate all or any part of its area as an alarm notification area;
- The authority must follow a consultation procedure if it wants to do this (publish notice of proposal in newspaper inviting representations within 28 days, notice of decision in newspaper stating date of the designation takes effect which must not be more than 28 days hence);
- Where a local authority has designated an area an alarm notification area, then under section 71(2) of the Act, people who have installed intruder alarms must nominate a key holder and give details to the local authority;
- Failure is an offence punishable up to level 3 on the standard scale (£1000);
- A fixed penalty notice regime is also implemented for this offence by sections 71 - 76.
- See fixed penalty notice table for the range of fines available for this offence

7. Statutory Nuisances (Light and Insects) (Sections 101 and 102)

Overview

Section 79 of the Environmental Protection Act 1990 defines what constitutes statutory nuisances (examples are fumes, gas, dust, noise etc). Local authorities have a duty to investigate and take action against statutory nuisances. Local Authorities must take reasonable steps to investigate complaints of such nuisances and, once satisfied that a statutory nuisance exists or may occur or recur, local authorities must serve an abatement notice.

Changes

7.1 Insects

- Section 101 amends section 79 of the 1990 Act so that insects emanating from all premises other than domestic premises are capable of constituting a statutory nuisance;

- This measure is intended to provide local authorities with a remedy to nuisances from insect infestations on relevant industrial and trade premises;
- It is not intended to be used against naturally occurring concentrations of insects on land, or in ways that would affect biodiversity;
- Regard should be had to DEFRA's more detailed guidance before using this new statutory nuisance;
- Likely sources of insect nuisance (listed by DEFRA) include poultry houses/farms, sewage treatment works, manure/silage storage areas, animal housing, stagnant ditches and drains, landfill sites and refuse tips, waste transfer premises, the commercial parts of mixed commercial/residential blocks of buildings (excluding the residential premises contained therein), trade or business premises (e.g. contaminated goods, kitchen areas), slaughterhouses, used car tyre recycling businesses
- INSECTS EMANATING FROM DOMESTIC PREMISES ARE NOT COVERED BY THIS REGIME

7.2 Artificial Lighting

- Section 102 amends section 79 so that artificial lighting is capable of constituting a statutory nuisance in certain circumstances;
- Artificial light nuisance is a source of light that in the opinion of a trained public health professional, who makes an assessment on a case-by-case basis, interferes with someone's use of their property and/or might be prejudicial to someone's health;
- This is different from light pollution and the statutory nuisance regime will not necessarily be the appropriate tool to deal with light pollution;
- It is anticipated that most complaints to local authorities will concern the following: -
 - Domestic Security Lights
 - Commercial Security Lights
 - Healthy Living and Sports Facilities
 - Domestic Decorative Lighting
 - Exterior Lighting of Buildings and Decorative Lighting of Landscapes
 - Laser Shows / Light Art / Sky Beams
- More detailed guidance on investigating on each of these areas is provided by DEFRA's Guidance and should be consulted where complaints are made.

8. Abandoned Trolleys (Section 99)

Background

Prior to the Act, charges were only payable by persons actually claiming the return of their trolleys. If proceedings were brought against a person for the recovery of such a charge, it was a defence for him to prove that he was not the owner of the trolley at the time it was removed.

Changes

- Section 99 amends Schedule 4 to the Environmental Protection Act 1990 so as 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
- Local Authority includes District Councils for the purposes of this section.

Other Points

Stray Dogs (Section 68)

The Act gives local authorities sole responsibility for stray dogs. Previously the responsibility has been shared between the police and local authorities. DEFRA has indicated that this change will come into force when a transfer of the relevant resources has been agreed.

This may have large implications for district councils because the service will need to be able to operate outside office hours (outside office hours the police are currently obliged to receive stray dogs). The Council will be required to take in stray dogs 'round the clock' and will require more budgetary resource for this.

Powers Not Duties

It should be borne in mind that the Act contains powers not duties. Councils need to decide which powers are appropriate for their area.

Wider Fixed Penalty Powers should not be seen as a new source of revenue. A Council's target should be to ensure compliance with the legislation under which they have fixed penalty powers.

A Council's target should be to issue no fixed penalties rather than an increasing number.

The more fixed penalties/prosecutions issued by a Council, the greater the Council is penalised under Best Value Performance review.

Code of Practice on Litter and Refuse

Background

Section 89(1) and (2) of the Environmental Protection Act 1990 imposes duties on certain landowners and occupiers (Duty Bodies) to keep specified land clear of litter and refuse, and duties on local authorities and the Secretary of State to keep clean public highways for which they are responsible. Under Section 89(7) the Secretary of State can publish a code of practice to help interpretation of these duties. A new code has been published. This new code came into force on 6 April 2006 and replaced the old Code dated 1st June 1999. The New Code affects OWBC because it is a Duty Body and a Principal Litter Authority. Re-zoning of areas.

- New Code of Practice on Litter and Refuse: 6 April 2006
- Replaces the previous code of 1st June 1999;
- Issued under Section 89(7) of the EPA 1990;
- Reclassifies the different types of land managed by Duty Bodies into 4 main zones based on intensity of activity and health and safety limitations to help guide Duty Bodies on the intensity of management required;
 1. High Intensity of Use
 2. Medium
 3. Low
 4. Special
- **Duty Bodies should allocate land into one of the 4 zones and manage it accordingly;**
- **Duty Bodies are expected to publish details of these zones for their land and make them available to the public on request;**
- All Duty Bodies in an area should consult together and develop an integrated approach to zoning. THIS SHOULD BE LED BY THE PRINCIPAL LITTER AUTHORITY and zoning should be completed within 1 year of commencement of the new Code coming into effect (i.e. by April 2007);
- It is recommended that any zoning or re-zoning is done after a period of consultation, any body under a duty should consult the Principal Litter Authority when changing an existing zone or zoning a previously un-zoned area;
- Duty Bodies are expected to set their cleaning schedules so that they meet their duty to keep their relevant land clear of litter and refuse and highways clean;
- As a last resort, if litter and refuse is not cleaned, response times have been set for each of the 4 classifications of land by which time land must be returned to an acceptable standard;

- If Duty Bodies don't clean within the response times they can be subject to a Litter Abatement Order or a Litter Abatement Notice issued under the Environmental Protection Act 1990.

DEFRA have published a guidance table setting out the response times for each classification of land.

DEFRA'S Fixed Penalty Notices Guidance

Background

The Clean Neighbourhoods and Environment Act 2005 introduces and widens a range of offences for which Fixed Penalty Notices ('FPNs') can be issued. It also classifies Parish Councils as litter authorities meaning their authorised officers have the ability to issue Fixed Penalty Notices - a power they have not had before.

Points of Note from the Guidance

- It is recommended that authorities starting to issue fixed penalties for the first time allow a well publicised lead-in period before any notices are issued (3 months recommended by DEFRA);
- During this time when an offence is committed a fixed penalty should not be issued;
- Parish Councils should make sure they have enough resources to pursue unpaid fixed penalties;
- Comprehensive training courses have been developed to help ensure any staff involved in enforcement are adequately trained (details available from DEFRA).

Who can issue FPNs?

- Authorised Officers of various local authorities;
- The definition of Authorised Officer varies depending on the offence -see the fixed penalty notice table,
- For some offences it can include 3rd party contractors (Litter, Dog Control Order, Graffiti, Fly posting, Flyering and Alarm Notification Area and FPNs) for others it can only be local authority authorised officers (e.g. Abandoning Vehicle FPNs);
- In all cases it includes an employee of a local authority authorised in writing to issue fixed penalties on behalf of that authority;
- Authorised employees of Parish Councils but they must complete an approved course of training recognised by the Secretary of State;
- Also the Environment Agency, National Park Authorities. The Broads Authority and Police Community Support Officers.

Amounts

- Some offences enable a local authority to specify the amount within a range;
- If an Authority does not specify an amount, a default amount will apply;
- Ranges are: -
 - From £50 - £80 for those offences with a default amount of £75 (e.g. offences under Dog Control Order)
 - From £75 to £110 for those offences with a default of £100 (e.g. street litter control notices)
- In determining the level local authorities will need to take into account the deterrent effect of different levels and people's readiness to pay and the levels of fines imposed locally for the relevant offence in a magistrates court;
- The aim is to have fixed penalties that are not too high for local conditions, or higher than the likely fine if it isn't paid;
- It is recommended that local authorities consult the police when setting fixed penalty levels. Parish Councils setting penalty levels for dog control offences should consult their relevant higher authority;
- Fixed penalties issued by Parish Councils must use the amount specified by the local authority in whose area they are issued. Discount for Early Payment
- The Act introduces a power for authorities to offer a discount for early payment;
- It is recommended that the period within which the discount applies is 10 days;
- Government regulations have specified the amount by which the discounts cannot fall:-

For offences with default rate of **£75** (not less than £59)

£100 (£60)

£200 (£120)

£300 (£180)

Form of Fixed Penalty Notices

- There is no prescribed form under law, but FPNs do have to contain a minimum amount of detail regarding the offence, the amount, how to pay and details of early payment;
- DEFRA have provided example FPNs but authorities should tailor these examples to meet their individual needs.

Receipts

- Receipts must be used for functions specified in the Acts under which fixed penalties are issued (but a local authority categorised as good or excellent under CPA can use receipts on any function of the local authority).

What do Councils need to do?

- For any Fixed Penalties being issued for the first time - allow a well publicised lead-in period (3 months);
- Parish councils should make sure they have the resources to recover unpaid fixed penalties (including the legal resources);
- Attend DEFRA training courses;
- Councils need to authorise officers in writing to issue fixed penalties;
- Where councils are issuing FPNs for offences for the first time, they need to allow a 3 month lead in period;
- Parish Council Officers need to attend approved training courses;
- Councils need to decide what amount within the prescribed range they intend to use for a fixed penalty, after taking into account local conditions, and consulting with the police;
- Councils also need to decide what discount amount they are going to adopt;
- Councils need to decide on a form for fixed penalty notices - use government forms as a basis and tailor to meet individual needs;
- Councils need to make they sure use receipts from fixed penalties for purposes authorised under the act by which they were issued.

Implications of Taking up Full Powers for Parish Councils

- *"It is important that any local authority that issues fixed penalty notices takes the necessary steps to ensure that they are paid"* - Margaret Beckett;
- Resources needed - officers and legal resources will be needed for enforcement and prosecutions (where FPNs are not paid)

Appendix 3



Equality Assessment

Part 1 - Initial Assessment or screening

Name of Policy/Function: Environmental Health and Licensing Enforcement Policy		This is new
	X	This is a change to an existing policy
		This is an existing policy, not previously assessed

Date of screening	6/7/17
Name of screener	Tony Cawthorne

1. Briefly describe its aims & objectives

To provide an up to date enforcement Policy for Environmental Health and Licensing

2. Are there external considerations? (Legislation/government directive etc)

The Anti-social Behaviour, Crime and Policing Act 2014 amendments and the Environment Act 2005 amendments to legislation and Statutory guidance for frontline professionals.

3. Who are the stakeholders and what are their interests?

Oadby and Wigston Borough Council Staff.
Church Cemeteries and grounds
The general rate paying public who instigate investigation of service requests
The general rate paying public who are subject to investigation of service requests
Members of commercial organisations who undertake work within the Borough who may be subject to enforcement action as a result of actions taken.

4. What outcomes do we want to achieve and for whom?

An updated Enforcement Policy the previous report was produced in 2008 and was due to be reviewed in 2013

5. Has any consultation/research been carried out?

Yes
Meeting with Departmental team members and management

6. Are there any concerns at this stage which indicate the possibility of inequalities/negative impacts? None

None

7. Could a particular group be affected differently in either a negative or positive way?

(Positive – it could benefit, **Negative** – it could disadvantage, **Neutral** – neither positive nor negative impact or **Not sure?**)

	Type of impact, reason & any evidence
Disability	Neutral
Race (including Gypsy & Traveller)	Neutral
Age	Positive: Young person's will be held accountable for their actions
Gender Reassignment	Neutral
Sex	Neutral
Sexual Orientation	Neutral
Religion/Belief	Neutral
Marriage and Civil Partnership	Neutral
Pregnancy and Maternity	Neutral

8. Could other socio-economic groups be affected e.g. carers, ex-offenders, low incomes?

All members of the Borough will be treated equally irrespective of status

9. Are there any human rights implications?

None due to the Human rights legislation and the proportionate use of the legislation and interests of public safety

10. Is there an opportunity to promote equality and/or good community relations?

The change can result in a positive impact on the residents and wider population in supporting a cleaner healthier environment to live, work and rest in and lead to a better quality of life.

11. If you have indicated a negative impact for any group is that impact legal (not discriminatory under anti-discrimination legislation)?

N/A The impact would be legal and non discriminatory.
.

12. Is any part of this policy/service to be carried out wholly or partly by contractors?

No

13. Is a full impact assessment required?

No

14. Date by which a full impact assessment is to be completed and actions

Please note that you should proceed to a Part 2, the full Equality Impact Assessment if you have identified actual, or the potential to cause, adverse impact or discrimination against different groups in the community.

We are satisfied that an initial screening has been carried out and a full impact assessment **is / is not required*** (please delete as appropriate).

Completed byTony Cawthorne.....Date...6/7/17.

Countersigned by...Stephen Glazebrook.....

Date.....6/7/17.....

This EIA form will then be published on the Council website