

Memorandum to the Environment, Food and Rural Affairs Select Committee

Post-Legislative Assessment of the Clean
Neighbourhoods and Environment Act 2005

July 2012



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Presented to Parliament

by the Secretary of State for Environment, Food and Rural Affairs by Command of Her Majesty

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Section	Page number
Introduction	4
Objectives of the Clean Neighbourhoods and Environment Act 2005	4
Implementation	4
Secondary Legislation and Guidance	5
Part 1 – Crime and disorder	5
Part 2 – Vehicles including nuisance parking, abandoned vehicles	6
Part 3 – Litter and Refuse	7
Fixed penalty notices: common provision	8
Part 4 – Graffiti and other defacement	8
Part 5 – Waste	9
Fly-tipping	9
Power to stop, search and seize vehicles	10
Forfeiture of vehicles	10
Failure to furnish documentation: fixed penalty notices	10
Waste receptacles	10
Local authority waste collection and disposal: abolition of requirement to contract out waste disposal functions	11
Payments for waste recycling and disposal	11
Power to require owner of land to remove waste	11
Site waste management plans	12
Part 6 – Dogs	12
Promotion of responsible dog ownership	13
Part 7 – Noise	13
Part 8 – Architecture and the built environment	14
Parts 9 and 10 – Miscellaneous	14
Parish and town councils	14
Abandoned shopping and luggage trolleys	14
Statutory nuisance: artificial light and insects	14
Contaminated land remediation notices: appeals and penalties	15
Conclusion	16

INTRODUCTION

1. This memorandum provides an assessment of the Clean Neighbourhoods and Environment Act 2005 (“the Act”) and has been prepared by the Department for Environment Food and Rural Affairs.
2. This Memorandum will be published as part of the process set out in the document *Post-legislative Scrutiny – The Government’s Approach (Cm 7320)*. The paragraphs below follow the order of the provisions in the Act.

OBJECTIVES OF THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

3. The Clean Neighbourhoods and Environment Act 2005 received Royal Assent on 7th April 2005. Most of the measures in the Act are based on proposals arising from a Government review of the legislative framework for providing and maintaining a clean and safe local environment that took place in 2002.
4. This review accompanied the cross-Government report *Living Places – Cleaner, Safer, Greener*. The review found that the powers, duties and guidance for dealing with problems associated with local environmental quality were not working as effectively as they should, and produced options for delivering changes. These options were contained in the consultation paper *Living Places – Powers, Rights, Responsibilities* launched at the Urban Summit on 31st October 2002. Some were introduced into legislation in Part 6 of the Anti-social Behaviour Act 2003. The majority of the options were developed further and included as proposals for legislative action within the Clean Neighbourhoods consultation launched on 25th July 2004.
5. The Act is a wide-ranging piece of legislation designed to cover many of the problems affecting the quality of our local environment including nuisance vehicles and abandoned vehicles, litter, graffiti and fly-posting, fly-tipping, noise disturbance and dogs in public places. Policy responsibility for these varied elements is distributed across several Whitehall departments.
6. The Act aims to provide local authorities, parish and town councils and others with a more effective tool-kit to manage and improve local environmental quality, enhance public spaces and tackle anti-social behaviour. In the majority of cases, the measures provide authorities with additional powers that they can choose whether or not to use. The measures are generally improvements on existing provisions, in response to the evaluation of the systems available prior to the Act coming into force.

IMPLEMENTATION

7. Almost all provisions of the Act are now in force, and were commenced progressively from 18th October 2005 to 6th April 2006. They were brought into force by means of five Commencement Orders and two Transitional Provisions and Savings Orders. Section 68 of the Act on stray dogs was commenced in April 2008. Only the provision on stop, search and seizure of vehicles suspected of involvement in fly-tipping have not been commenced.

SECONDARY LEGISLATION AND GUIDANCE

8. Comprehensive guidance documents to help local authorities and other duty bodies to understand the application of the powers available to them were published in 2006 including:
 - a. Abandoned and nuisance vehicles
 - b. Litter and refuse – updated August 2007
 - c. Defacement (graffiti and fly-posting)
 - d. Waste
 - e. Dog Control Orders
 - f. Noise
 - g. Fixed Penalty Notices – updated November 2006
 - h. Abandoned trolleys
 - i. Statutory Nuisance (light and insects)
 - j. Issuing Fixed Penalty Notices to Juveniles
 - k. Code of Practice on Litter and Refuse
 - l. Guidance on the use of Fixed Penalty Notices.
9. A number of secondary SIs were introduced to cover the provisions in the Act including:
 - a. Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 – S.I. 2006/1334
 - b. Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 – S.I. 2006/783
 - c. Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 – S.I. 2006/1059
 - d. Dog Control (Procedures) Regulations 2006 – S.I. 2006/798
 - e. Controls on Dogs (Non-application to Designated Land) Order 2006 – S.I. 2006/779
 - f. Statutory Nuisances (Insects) Regulations 2006 – S.I. 2006/770
 - g. Statutory Nuisance (Appeals) (Amendment) (England) Regulations 2006 – S.I. 2006/771
 - h. Statutory Nuisances (Artificial Lighting) (Designation of Relevant Sports) (England) Order 2006 – S.I. 2006/781
 - i. Joint Waste Disposal Authorities (Recycling Payments) (Disapplication) (England) Order 2006 – S.I. 2006/651
 - j. Environmental Protection (Waste Recycling Payments) Regulations 2006 (SI 2006/743)
 - k. Highways Act 1980 (Gating Orders) (England) Regulations 2006 – S.I. 2006/537
 - l. Anti-social Behaviour Act 2003 (Commencement No.6) (England) Order 2006 – S.I. 2006/393 (C.11) – *only insofar as some of the 2003 Act provisions commenced have been amended by the CNEA 2005.*

PART 1 – CRIME AND DISORDER

10. This Part amended the Crime and Disorder Act 1998 relating to Crime and Disorder Reduction Partnerships (now known as Community Safety Partnerships) to require them to have regard in devising their strategies to offences which damage the local environment as part of the continuum from litter, graffiti, fly-tipping etc. to wider issues of crime and disorder.
11. Part 1 also makes provision for the gating of minor highways that attract anti-social behaviour. This section amended the Highways Act 1980 and gave new powers to local authorities to deal with nuisance alleyways, through the provision of Gating Orders. The aim was to prevent alleyways being used for crime or anti-social behaviour including burglary, fly-tipping, drug taking, vandalism and graffiti which can raise levels of anxiety within the community about crime and anti-social behaviour. 'Gating', that is blocking some or all of the access points

to the highway using metal gates, may reduce these problems. A Gating Order restricts the public right of way over the highway and, where necessary, authorises the installation of gates or barriers to enforce the restrictions. The power does not permanently extinguish rights of way, making it possible to subsequently revoke the restrictions and reinstate the public's right to use the highway, if appropriate. Pilot schemes involving gating alleyways had proven success at reducing burglaries by up to 50%.

12. Gating Orders have to be advertised locally and if objections are made, the Order is referred to the Planning Inspectorate for determination. There are no figures collected centrally on how many local authorities have made use of this additional power.
13. The Home Office White Paper – *'Putting victims first – more effective responses to anti-social behaviour'*, published on 22nd May 2012, sets out plans to give local authorities a single flexible power (the Community Protection Order (public space)) to put in place local restrictions to address a range of anti-social behaviour issues in public places, and prevent future problems. This would cover a wide range of problem behaviours, and replace Gating Orders. The new order would be issued by the local authority (in consultation with the police and a directly elected Police and Crime Commissioner).

PART 2 – VEHICLES INCLUDING NUISANCE PARKING, ABANDONED VEHICLES

14. This Part introduces two new offences relating to nuisance parking and amends the law relating to abandoned vehicles.
15. The Act makes it an offence to carry out restricted work (repairs and other works) on the road, as well as making it an offence to leave two or more vehicles for sale on a road within 500m of each other for the purposes of carrying on a business. The provision is not aimed at individuals selling cars privately. Often vehicles are exposed for sale or repaired in the street as part of a commercial business which creates a blight, takes up residents parking spaces and can damage the highway.
16. Where a person proves that he was not repairing the vehicle in the course of a business and where the works did not give "reasonable cause for annoyance" to persons in the vicinity no offence is committed. Similarly repairs arising from a breakdown or accident and carried out promptly are not to be treated as an offence.
17. Local authorities have been given the power as an alternative to prosecution to issue fixed penalty notices to car dealerships using the highway as an extension of their forecourt, or garages using it to repair cars.
18. In the early years of the century abandoned vehicles had seen an increase partly due to the falling price of scrap metal. Under the Environmental Protection Act 1990 local authorities have a duty to remove abandoned vehicles, but as it was often difficult to identify the registered keeper they were obliged to fix a notice to it communicating their intent to remove the vehicle, which often attracted anti-social behaviour.
19. The Act removed the need to fix a notice to an abandoned vehicle, enabling authorities to remove the vehicle immediately. Efforts must be made to locate the registered keeper, who can reclaim their vehicle on payment of a fixed penalty notice and any associated costs. Otherwise the authority are entitled to destroy it.
20. The Act amends the Refuse Disposal (Amenity) Act 1978 which makes it an offence to abandon a motor vehicle by providing for an authorised officer of a local authority as an alternative to prosecution to issue a fixed penalty notice (default value of £200) in respect of an offence of abandoning a vehicle.

21. In 2008-09 figures obtained from local authorities indicate a total of 454 fixed penalty notices were issued for abandoning vehicles, and 150 for nuisance parking. The numbers of abandoned vehicles have significantly declined since the introduction of the Act, with some local authorities reporting as much as 90% decrease in the number of vehicles being removed from the highways. Rises in the value of scrap metal during these years have helped to reduce this aspect of anti-social behaviour.

PART 3 – LITTER AND REFUSE

22. The Environmental Protection Act 1990 made it an offence to drop litter; the Act extended this to cover all open spaces including bodies of water, such as rivers or lakes or on beaches above the low water mark.
23. The Act replaced litter control areas with Litter Clearing Notices. The previous system was complicated and ineffective and few local authorities made use of it. A Litter Clearing Notice may be served on an occupier of any land in the open air (or if the land is unoccupied, the notice may be served on the owner) requiring the land to be cleared of litter and refuse within a certain time, and may specify steps to be taken to prevent future defacement. According to figures requested from local authorities some 380 fixed penalty notices for non-compliance with Litter Clearing Notices were issued in 2008-09.
24. The Act makes it directly an offence for an undertaking to fail to comply with a Street Litter Control Notice, rather than requiring the local authority to obtain an order from the Magistrates' Court first as was the case hitherto and extends the scope of these notices to include vehicles and mobile stalls. These notices are intended to assist local authorities to prevent accumulations of litter and refuse in and around any street that originates from commercial or retail activities typically around fast food outlets. According to figures requested from local authorities only 15 fixed penalty notices for non-compliance with Street Litter Control Notices were issued in 2008-09.
25. The Home Office White Paper – *'Putting victims first'* sets out plans to introduce a single, flexible power (the Community Protection Notice) to deal with persistent problems affecting a community's quality of life. The notice could be issued by a range of local agencies to an individual, or to a responsible person within a business or other organisation, to tackle a range of anti-social behaviour (e.g. graffiti, littering, dog fouling or using a skateboard somewhere inappropriate). The notice will replace Litter Clearing Notices and Street Litter Control Notices.
26. The Act gives local authorities the power to control the distribution of free literature to prevent such material from becoming litter in the local environment and extended controls to areas outside of London and Newcastle upon Tyne where such powers already existed – the Act repeals these powers and replaces them with similar legislation on a national basis. It is an optional provision that involves the local authority setting up a designation and consent system and control areas should only be adopted in areas where there is a net benefit of doing so.
27. Specific exemptions apply to the distribution of printed matter by or on behalf of a charity where the material relates to or is intended for the benefit of the charity, where the distribution is for political purposes or for the purposes of a religion or belief.
28. Figures obtained from local authorities indicate that some 313 fixed penalty notices were issued in 2008-09 in relation to breach of distribution controls.

29. The Coalition's Programme for Government in 2010 made working to reduce litter as part of the move towards a zero waste economy a priority. Levels of litter have not improved significantly over the past ten years. The Government sees the key to achieving sustained reduction in levels of litter as changing the behaviour of those that drop litter in the first place whether that be casually discarding chewed gum or a cigarette butt or throwing rubbish from a vehicle. Thus, in addition to appropriate use of the enforcement powers available to local authorities the Government has encouraged the development through its delivery partner Keep Britain Tidy of the *Love Where You Live* campaign. The campaign brings together business, local authorities, communities and civil society to raise awareness of the issue, encourage community clean up activity and change behaviour.
30. The Act specifically defines smoking-related material and discarded chewing gum as litter. The Chewing Gum Action Group, a cross-sectoral group involving local authorities, trade associations, civil society groups and funding from gum manufacturers was set up shortly after the Act. It has had some success in reducing the amount of gum dropped in partnership with local authority areas through education and awareness campaigns.

FIXED PENALTY NOTICES: COMMON PROVISIONS

31. Local authorities have had the option to issue fixed penalty notices to litterers as an alternative to prosecution in a Magistrate's Court since the Environmental Protection Act 1990. An aim of the Act was to facilitate use of fixed penalty notices and the Environmental Protection Act 1990 was amended relating to the fixed penalty notices offered associated with offences including dropping litter, litter clearing notices, street litter control notices and the distribution of printed matter.
32. The Act provides that where an authorised officer of a local authority proposes to give a person a fixed penalty notice, he may require that person to give him his name and address, and it is an offence for that person to fail to do so or to give false or inaccurate information.
33. The Act also has the effect of enabling parish and community councils to authorise duly trained officers to serve fixed penalty notices for the litter offence.
34. Regulations set the range within which a locally determined fixed penalty amount must fall and the amount of the fixed penalty where no local rate is set by the relevant authority. These regulations also provide for treating a fine as having been paid if a lesser amount is paid before the end of a set (shorter) period specified by the local authority.
35. The number of fixed penalty notices issued for littering has risen following the introduction of the Act. In 2003/04 some 7,500 were issued; in 2008-09 35,500 were issued.

PART 4 – GRAFFITI AND OTHER DEFACEMENT

36. The Act amends the Antisocial Behaviour Act 2003 to extend graffiti removal notices, which were described in the 2003 Act, to cover fly-posting too. These became known as Defacement Removal Notices. This makes it easier for local authorities to tackle both graffiti and fly-posting, and encourage owners of buildings to take more preventative measures to avoid defacement.
37. The Anti-social Behaviour Act 2003 enables local authorities to issue notices requiring the removal of graffiti from certain surfaces to statutory undertakers (such as railways and port authorities) or a person responsible for street furniture (such as telecom utility boxes). If the graffiti removal notice is not complied with, the local authority can remove the graffiti themselves and reclaim their costs. The Act extends their application to cover illegal advertising (fly-posting) and amends the defence that can be offered that the advertisement was either

displayed without the knowledge of the person, or that he either took all reasonable steps to prevent the display, or to secure its removal after the advertisement had been displayed.

38. It also gives local authorities the power to remove advertisements, posters and placards that are displayed unlawfully and to recover the costs of removal and damage to property. The proposed Community Protection Notice (see above) will replace Defacement Removal Notices, to give local agencies a single, flexible power to deal with a range of persistent problem behaviours that are having a negative impact on a community's quality of life.
39. The Act places a duty on local authorities to review the need for enforcement action and investigation into the extent of the problem with regards to the sale of aerosol paints to children. It is intended to reduce the incidences of offences under section 54 of the Anti-social Behaviour Act 2003 (sale of aerosol paints to person under 16 years of age).
40. Local authorities have just been given new powers under Section 127 of the Localism Act 2011 to deal with the owners of 'relevant surfaces' that are defaced by persistent graffiti. Owners can be required to do the necessary works or the local authority can do the work and recover their expenses. These came into force in April 2012 and extend powers already available in London to the rest of England.

PART 5 – WASTE

41. This Part makes miscellaneous provision about waste covering the registration of carriers of waste; the illegal deposit of waste ("fly-tipping") and the powers and duties of local authorities to collect and dispose of waste; and provision to deal with waste generated at construction sites.

Fly-tipping

42. The illegal deposit of waste, known as fly-tipping, is a significant blight on the environment and is a large problem for land managers across the country. There are considerable costs associated with clean up of this waste and these concerns lay behind the decision to introduce additional measures to protect against this environmental crime.
43. The Act amends certain elements of the Control of Pollution (Amendment) Act 1989 in relation to the transport of waste including provisions such as the power to stop, search and seize vehicles and the power to issue fixed penalty notices for failing to produce authority for transporting controlled waste.
44. Chapter 2 of the Act amends sections 33 and 34 of the Environmental Protection Act 1990 related to the unlawful deposit of waste and the waste duty of care. It increased the maximum fine upon conviction of unlawful deposit from £20,000 to £50,000, and enabled courts to make an order requiring offenders to cover the costs of seizure of vehicles, clean up costs etc.; it raised the maximum term of imprisonment on conviction on indictment for non-hazardous waste offences to five years (the same as is already applied for offences involving hazardous waste).
45. The Act enabled the courts to make an order requiring the offender to pay to either the Environment Agency or a waste collection authority or the occupier of land or the owner of land, any costs incurred by them in removing waste that has been illegally deposited or disposed of on land, or in taking steps to eliminate or reduce the consequences of the deposit or both.
46. It also allows authorities to issue fixed penalty notices for failing to produce appropriate documentation.

Power to stop, search and seize vehicles

47. The Act extended powers for an authorised officer of an enforcement authority or a police officer to stop, search and seize a vehicle (and its contents) where it is reasonably believed that the vehicle has been, is being, or is about to be, used in the commission of a relevant offence under sections 33 or 34 of the Environmental Protection Act 1990. Failing to assist or otherwise intentionally obstructing an authorised officer or police officer or failing to provide the name and address of the registered owner of the vehicle are also made offences.
48. The extended powers of stop, search and seizure haven't been commenced as yet. These provisions were subject to consultation by Defra in 2008 and were subsequently considered as part of the Defra Waste Policy Review (2010-11). Following that review Defra plan to commence the powers and lay secondary legislation later in 2012.
49. The Control of Pollution Amendment Act 1989 already allows waste disposal authorities to seize vehicles in respect of unlicensed waste disposal but only after a warrant has been issued and only to ascertain who was driving the vehicle at the time the offence was committed. The proposed new regulations would widen the range of offences for which vehicles could be seized to include fly-tipping, operation of an illegal waste site, breaches of the waste duty of care and carrying controlled waste while unauthorised and will remove the need for a warrant before seizure. They will also set out how seized property should be dealt with, how long it can be retained and circumstances in which it can be sold or destroyed. Guidance is also being prepared to ensure proportionate use of the extended powers.

Forfeiture of vehicles

50. The Act introduces a new provision where a person has been convicted of a fly-tipping offence to enable the court to make an order to seize the offenders vehicle (and its contents) if the court is satisfied that the vehicle was used in or for the purpose of the commission of the offence.

Failure to furnish documentation: fixed penalty notices

51. Section 34 of the Environmental Protection Act 1990 places a duty on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a dealer or broker, has control of such waste, to secure a written description of the waste whenever it is transferred. The Act empowers an enforcement authority as an alternative to prosecution to issue a fixed penalty notice (with a default value of £300) to a person who has failed to comply with a requirement to furnish documents.

Waste receptacles

52. Where an authorised officer of a local authority has reason to believe that a person has committed an offence under section 46 or 47 of the Environmental Protection Act 1990 relating to waste receptacles, the Act enables the officer, as an alternative to prosecution, to issue a fixed penalty notice to that person. The amount is set locally within a range specified by the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007. The Act amended the Environmental Protection Act 1990 also to enable provision to be made for the amount to be discounted if the penalty is paid early. Figures requested from local authorities indicate that for 2008-09 about 1,150 fixed penalty notices were issued for such offences.
53. Following the Waste Policy Review by Defra in 2011 the department launched a public consultation in January 2012 seeking views on proposals to replace the current criminal offence in this area with a new, civil sanction. Local authorities will continue to be able to issue fixed penalties in limited circumstances based on a "Harm to local amenity" test. This will ensure that any penalties are targeted appropriately at householders whose behaviour has a detrimental impact on the local neighbourhood. In the meantime, interim measures came

into force on 30th May 2012, by way of amendments to the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 and the Environmental Protection Act 1990. These have reduced the range and level of penalties, the minimum amount after early payment, and the default amount under the current fixed penalty notice system.

Local authority waste collection and disposal – abolition of requirement to contract out waste disposal functions

54. Prior to this provision of the Act coming into force, waste disposal authorities (county councils and unitary authorities) were required by the Environmental Protection Act 1990 to make arrangements for the disposal of all municipal waste collected in their area. Section 32 of the 1990 Act required them to transfer their waste disposal undertakings either to “arm’s length” bodies or wholly to the private sector. Section 47 of the Act repeals section 32 of and Schedule 2 to the Environmental Protection Act 1990, thereby repealing the requirement for waste disposal authorities to have to form or participate in forming waste disposal companies; limiting companies thus formed to waste functions only; and requiring waste disposal authorities to dispose of controlled waste only through waste disposal contractors. This allows waste disposal authorities greater opportunity to affect improvement in the way that best fits their local circumstances.

Payments for waste recycling and disposal

55. Section 52 of the Environmental Protection Act 1990 imposed a duty on waste disposal authorities to make payments to waste collection authorities in their area. It provided for payments to be made by both tiers to third parties where waste is taken for recycling. The purpose of these payments was to offset any disincentive to recycle by making available to recyclers the savings in disposal and collection costs in respect of waste retained. That system was introduced before many of the other policy levers designed to encourage recycling were put in place.
56. Section 49 of the Act amends section 52 of the 1990 Act to give the Secretary of State the power to make regulations in England to set the method of calculation of the payments allowing calculations to take into account increasing disposal costs due to diversion from landfill and the rising rate of landfill tax. This power has been exercised to make the Environmental Protection (Waste Recycling Payments) Regulations 2006 (SI 2006/743).
57. Section 52(1A) gives the Secretary of State the power to disapply by order the duty on a Joint Waste Disposal Authority to make payments to a waste collection authority¹ in respect of waste collected and retained for recycling. This power has been exercised to make the Joint Waste Disposal Authorities (Recycling Payments) (Disapplication) (England) Order 2006 (SI 2006/651). Section 52(1B) exempts a waste disposal authority in England from the duty to make payments to a waste collection authority in respect of waste retained by the waste collection authority where the two authorities agree to alternative arrangements. Where no such mutually agreed arrangements are in place the duty to make payments applies.

Power to require owner of land to remove waste

58. The Environmental Protection Act 1990 provided that where controlled waste was illegally deposited on any land a notice may be served on the *occupier* of land, requiring him to remove the waste or to take such specified steps with a view to eliminating or reducing its consequences.

¹ Section 52(1A) was subsequently amended by the Local Government and Public Involvement in Health Act 2007 to add in the words “or any authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities)”.

59. The Act extends this provision to allow a notice to be served on the *owner* of the land where there is no occupier or the occupier cannot be found. The occupier or owner can appeal the notice if he neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste.
60. If an occupier or owner fails to comply with the requirements in a notice, the Act enables the authority to enter the land, remove the waste and recover the costs of doing so from the occupier or owner.

Site waste management plans

61. The Act provided powers for regulations to be made to require developers and contractors of construction and demolition projects to prepare site waste management plans which set out the arrangements for managing and disposing of waste created in the course of the project and were designed to address concerns over illegal disposal of waste through fly-tipping. Evidence from the Flycapture database suggests that construction waste (as a proportion of all fly-tipping) has not decreased significantly staying relatively flat in the years 2008-2011.
62. These provisions were reviewed in 2011 as part of the Government's regulatory reform exercise, the Red Tape Challenge, and are set to be rescinded, subject to further consultation, by the end of 2012.

PART 6 – DOGS

63. The Act allows local authorities and parish and community councils to create offences relating to the control of dogs, for example around issues such as fouling and access to land. This power is intended as a more convenient alternative to existing powers to create byelaws. This power does not relate directly to legislation for dealing with dangerous dogs. The Act further relieves the police of most of their statutory responsibilities for stray dogs.
64. Prior to the Act's provisions coming into force, local authorities and parish and town councils could make byelaws to control dogs on certain areas of land and required byelaws to be "confirmed" by the relevant authority before they could have effect. This system was considered costly and complicated to administer, both for central and local government. The Act replaces the previous system of dog byelaws with a new system of Dog Control Orders.
65. Under the new system local authorities and parish councils are able to provide by order for offences to apply in designated land in their area. The offences are standard offences which are prescribed in regulations; the prescribed offences include fouling by dogs (and therefore the Dogs (Fouling of Land) Act 1996 has been repealed), keeping of dogs on leads in designated areas, the exclusion of dogs from such areas and the maximum number of dogs that one person may walk in such an area.
66. Whilst there is no central record of the number of Dog Control Orders that have since been issued by local authorities figures from 2008-09 indicate that 1,300 fixed penalty notices were issued in relation to offences under these orders. The deregulation of dog byelaws has also resulted in considerable administrative savings for both central and local government and has enabled more cost-effective enforcement. The Community Protection Order (public space) would replace Dog Control Orders, giving local authorities (in consultation with the police and the directly elected Police and Crime Commissioner) a single, flexible power to deal with anti-social behaviour in public places.

67. The Act also ended the role of the police in dealing with stray dogs, repealing section 3 of the Dogs Act 1906 (which enabled police officers to seize stray dogs found in public places), in order to free up police time and allow them to concentrate on other policing duties. Responsibility for stray dogs had been shared between local authorities and the police but now remains solely with the local authority.

Promotion of responsible dog ownership

68. In April 2012 Defra announced a package of measures aimed at promoting more responsible dog ownership, including a public consultation on legislative changes which closed in June.

69. Legislative changes under consideration will include compulsory microchipping of dogs which may cover all puppies or all dogs within a year. The primary aim of microchipping is to reunite lost dogs with their owners but it should also help reduce the costs burden on local authorities and re-homing centres of re-homing dogs that cannot be traced to their owners, as well as providing traceability back to owners where their dog has caused a nuisance or attacked someone.

70. The EFRA committee plans to investigate dog control and welfare policies and the inquiry will include consideration of the measures for tackling irresponsible dog owners that were announced for consultation by Defra in April 2012. In particular, the Committee will seek views on whether the Government's proposed approaches will deliver the right legal framework, enforcement regime and educational support to reduce irresponsible dog ownership and tackle out of control dogs. The Committee will also look at the Home Office proposals relating to anti-social behaviour as far as they relate to dogs.

PART 7 – NOISE

71. This Part addressed various issues relating to noise disturbance.

72. Local authorities were given powers under the Act to designate alarm notification areas in which it is a requirement for those with intruder alarms to register key-holder details with the authority. Where reasonable steps fail to get a key-holder to silence an alarm the Act allows an authorised officer of a local authority to enter a premise without force, where possible, to deactivate an alarm, and to obtain a warrant to force entry where this is not possible.

73. Existing powers for dealing with night time noise from domestic premises were extended to cover noise from licensed premises. These powers allow local authorities to resolve complaints about noise between 11pm and 7am by issuing a fixed penalty notice to those exceeding a permitted level of noise. The Act also enabled local authorities to set the level of the fixed penalty in its area for night noise offences from domestic premises, the default amount being £100.

74. Finally, the Act gave local authorities the option to defer issuing an abatement notice in cases where it has been established there is a noise statutory nuisance. Authorities are now able to wait seven days and try alternative methods of resolution before they are required to issue a notice.

75. As an alternative to prosecution authorities are able to issue a fixed penalty notice under the Noise Act 1996 for noise coming from licensed premises 24 hours a day rather than just between 11pm and 7am.

76. Data indicating the extent to which these powers have been taken up by local authorities is not held by central Government.

PART 8 – ARCHITECTURE AND THE BUILT ENVIRONMENT

77. This Part of the Act established a statutory corporation known as the Commission for Architecture and the Built Environment. It also transferred the functions, staff and property of the existing Commission of the same name (set up as company limited by guarantee in 1999) to the new statutory body, and dissolved the old Commission. This was intended to improve public accountability by making the new Commission subject to the Comptroller and Auditor General.
78. The functions of the Commission were the promotion of education and high standards in, and understanding and appreciation of, architecture and the design, management and maintenance of the built environment. The old Commission was successfully dissolved without any problems, and the new Commission operated successfully up to 31 March 2011. It produced annual reports and accounts giving details of its performance and achievements which were laid before Parliament.
79. As part of the Spending Review announcements on 20 October 2010 the Department of Culture, Media and Sport announced that it intended to cease funding the Commission (CABE) after 2011-12. In 2011 some of the functions of CABE were merged with the Design Council, and under a power in Part 8 CABE was dissolved on 21 January 2012 following the passing of the Commission for Architecture and the Built Environment (Dissolution) Order 2012 number 147.

PARTS 9 AND 10 – MISCELLANEOUS

80. These Parts of the Act contain miscellaneous and supplementary provisions.

Parish and town councils

81. Parish and town councils have been empowered to issue fixed penalty notices, which has allowed enforcement to follow at the most local level. There is no obligation for parish councils to assume this greater responsibility.

Abandoned shopping and luggage trolleys

82. The Act amended the Environmental Protection Act to enable local authorities to reclaim costs from the person believed to be the owner of abandoned shopping trolleys for their collection, storage and disposal.

Statutory nuisance: artificial light and insects

83. The Act amended the Environmental Protection Act 1990 to extend statutory nuisance provisions to include “artificial light emitted from premises so as to be prejudicial to health or a nuisance” (except from certain transport premises, lighthouses and prisons) and “insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance”.
84. In 2010 Defra published a review of the number and type of artificial light nuisance complaints made to local authorities since artificial light was added to the regime. The review reported that over a three-year period in England (2006-2009), 4,309 light nuisance complaints had been made to the 114 respondent local authorities and over a two-year period in Wales (2007-2009), 274 complaints had been made to the eight authorities responding. Based on annualised data, the study suggested an average of around 12 complaints per authority per year about alleged light nuisance. A total of 32 abatement notices had been served amongst those local authorities responding to the study, although it was noted that this figure may under-represent the number of situations where a statutory nuisance existed; case examples

suggested authorities sought an informal resolution wherever possible rather than immediate service of an abatement notice.

85. In 2011 Defra committed in their Natural Environment White Paper to consult relevant organisations on whether the exemptions from artificial light statutory nuisance continue to be appropriate. As a result, an informal consultation was held from December 2011-February 2012 and the outcome of that consultation is due to be announced in summer 2012.
86. Defra's local authority statutory nuisance survey, published in 2011, found that an average total of 1471 complaints of alleged nuisance from insects were made per year to the 119 English local authorities responding to the survey; an average of 13 complaints per authority per year. An average total of six abatement notices were served amongst those local authorities responding to the survey per year. Generic comments from local authorities on the statutory nuisance regime as part of the survey noted that the use of informal means through negotiation and persuasion is a more common approach than the service of abatement notices in the majority of investigations.

Contaminated land remediation notices: Appeals and penalties

87. The Act amended the Environmental Protection Act 1990 to improve the process for dealing with contaminated land, by making all appeals against remediation notices to the Secretary of State as opposed to magistrates. This replaced the previous arrangement under which magistrates' courts considered appeals where the notice had been served by the local authority, and the Secretary of State considered appeals where the notice had been served by the Environment Agency. This change therefore provided a single appellate authority for remediation notices, whether served by the local authority or the Environment Agency. Revised Statutory Guidance under the Part 2A Contaminated Land regime was issued in April 2012.
88. The Act also, by way of amendment to paragraph 25 of Schedule 1 to the Pollution Prevention and Control Act 1999, raised the penalties that may be included in regulations made under that Act in relation to summary conviction for offences included in such regulations. The maximum fines available on summary conviction rose from £20,000 to £50,000 and the maximum sentence available on summary conviction increased from six to twelve months. The Environmental Permitting (England and Wales) Regulations 2010 creates offences under the Pollution Prevention and Control Act 1999 (for example, contravention of the requirement for a permit to operate an installation or mobile plant, failure to comply with or to contravene a condition of a permit and failure to comply with the requirements of an enforcement notice or a suspension notice), and includes provision for penalties using the increased maxima provided by the Act.

CONCLUSION

89. The Clean Neighbourhoods and Environment Act 2005 was designed to equip local authorities and other relevant bodies with the powers to effectively deal with local environment quality issues. Local authorities retain the discretion and flexibility on whether and how they choose to use the powers provided to them.
90. A key aim of the Act was to facilitate use of fixed penalty notices as an alternative to prosecution for most offences. In the years immediately following Royal Assent of the Act figures on fixed penalty notice usage were requested from local authorities.
91. These showed that most local authorities were using powers and for litter the increase in the number of fixed penalty notices issued shows the willingness of local authorities to use these powers. The collection of these figures was discontinued in 2010 as part of the removal of data burdens on local authorities and the last year for which figures are held is 2008/09.
92. Since the Act received Royal Assent several policy and legislative changes have affected the provisions in the Act. The Localism Act has introduced additional provisions as regards graffiti and fly-posting; the Government review of the regulatory framework through the Red Tape Challenge has affected provisions in the Waste area; public consultations on fines related to waste receptacles, anti-social behaviour and irresponsible dog ownership are set to make further changes to tools and powers to effectively tackle anti-social behaviour and improve local environmental quality. Additionally, the Home Office is currently reviewing powers of entry under both primary and secondary legislation as part of implementing the Protection of Freedoms Act 2012. The Freedoms Act includes reforms to rationalise the known powers of entry relating to domestic, commercial and other types of premises and, as such, may also have implications for certain powers in the Act.

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