



NORTHAMPTON BOROUGH COUNCIL

OVERVIEW AND SCRUTINY

SCRUTINY PANEL 3 – KEEP NORTHAMPTON TIDY

15 JANUARY 2015

BRIEFING NOTE: SHOP CLEANING ORDERS

(COMMUNITY PROTECTION ORDER)

AND

STREET LITTER CONTROL NOTICES

1 INTRODUCTION

- 1.1 At its meeting on 23 October 2014, the Scrutiny Panel requested that desktop research be undertaken regarding Shop Cleaning Orders (Community Protection Orders).
- 1.2 This briefing note also provides information regarding Street Litter Control Notices.

2 ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT

- 2.1 In respect of littering and cleaning of shop fronts, Part 4, Chapter 1 (Community Protection Orders) (CPN) of the above Act states that the Community Protection Notice (CPN) is intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible (section 43(1)).
- 2.2 The CPN can direct any individual over the age of 16, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again (section 43(3)).
- 2.3 The CPN replaces current measures such as litter clearing notices, defacement removal notices and street litter control notices.

- 2.4 CPNs are not meant to replace the statutory nuisance regime, although (as with these existing measures) there is no legal bar to it being used where behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990.
- 2.5 The CPN should be issued to someone who can be held responsible for the anti-social behaviour (section 44). For instance, if a small shop were allowing litter to be deposited outside the property and not dealing with the issue, a notice could be issued to the business owner, whereas if a large national supermarket were to cause a similar issue, the company itself or the store manager could be issued with a notice.
- 2.6 The power to issue a CPN will be available not only to the Police and Local Authority staff but also to PSCOs, if designated by the Chief Constable (section 53(5); under section 53(6) a PSCO will also be able to issue a fixed penalty notice for the offence of breaching a CPN, if designated for that). In addition, the power to issue a CPN will be available to persons who are designated by the relevant authority, if they fall within a description specified in an order made by the Secretary of State.
- 2.7 Before issuing a CPN, an authorised person is required to inform whatever agencies or persons he or she considered appropriate (for example the landlord of the person in question, or the local authority), partly in order to avoid duplication (section 43(6)). The person would also have to have issued a written warning in advance and allowed an appropriate amount of time to pass (section 43(5)). This is to ensure that the perpetrator is aware of their behaviour and allows them time to rectify the situation. It will be for the person issuing the written warning to decide how long is appropriate before serving a notice.
- 2.8 Wherever possible, the notice should be issued in person. However, where this is not possible, it can be posted or left at the proper address (section 55(1)). In the case of the latter when it relates to a business, the address may be different from the location of the anti-social behaviour.
- 2.9 Remedial works or works in default can be added to the notice immediately or once the individual, business or organisation has had sufficient time to comply with any requirements (section 47). For example, if the behaviour related to a front garden full of rubbish, the individual could be given a period of seven days to clear the waste. The issuing officer could also make clear on the face

of the notice that if this was not complied with, they would authorise the works in default on a given date and at a given cost. Consent would only be required when that work necessitated entry to the perpetrator's property – those issuing a notice would be able to carry out remedial works in default in areas "open to the air" (section 47(5)), for instance clearing rubbish from a front garden. This is in line with current provision in section 92 of the Environmental Protection Act 1990. Timescales could also be set for clearing of rubbish outside shop frontages.

- 2.10 In undertaking remedial works or works in default, the local authority is exempted from liability in the event of any damage caused by works carried out in good faith and with due care and attention (section 54).
- 2.11 A person issued with a CPN may appeal within 21 days to the Magistrates' Court. Grounds for appeal include that the conduct specified in the notice did not meet one of the tests for issuing a notice or that the person could not reasonably be expected to control the behaviour. While an appeal is pending, any requirements in the notice for the person to stop doing certain things will have effect, but positive requirements to do certain things will not (section 46). For example, where rubbish has accumulated in someone's front garden and a notice issued to the owner, a requirement to stop adding to the rubbish would continue in effect but a requirement to clear the garden would not.
- 2.12 Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice (which attracts a penalty of £100) (section 52) or prosecution. On summary conviction an individual would be liable to a level 4 fine (currently up to £2,500). An organisation is liable to a fine not exceeding £20,000. On conviction, the Magistrates' Court would have the power to order forfeiture and destruction of any item used in the commission of the offence – for instance, noise equipment (section 50). Where necessary, the court can also issue a warrant allowing a constable or local authority to seize such items (section 51).
- 2.13 The Secretary of State may issue and revise guidance to chief officers of Police and Local Authorities about the exercise of functions under Chapter 1 of Part 4 of the Act (section 56).

2.14 Community protection notices will be different from the powers they replace in the following ways:

a.

They cover a wider range of behaviour (all behaviour that is detrimental to the local community's quality of life) rather than specifically stating the behaviour covered (for example, litter or graffiti);

b.

Noise disturbance could be tackled, particularly if it is demonstrated to be occurring in conjunction with other anti-social behaviour;

c.

The notices can be issued by a wider range of agencies: the police, local authorities and private registered providers of social housing (if approved by local authorities), thereby enabling the most appropriate agency to deal with the situation;

d.

The notices can apply to businesses and individuals (which is the same as for some of the notices they will replace but not all); and

e.

It would be a criminal offence if a person did not comply, with a sanction of a fine (or fixed penalty notice) for non-compliance. This is the case at the moment for litter-related notices but not defacement removal notices.

3 STREET LITTER CONTROL NOTICES

3.1 Local Authorities are required to clear litter from pavements and the highways.

3.2 A number of specific laws were brought in to encourage and allow enforcement to support proper disposal and to reduce the financial burden on councils in street cleansing. One of the legal powers (Street Litter Control Notices) gives Councils the power to tackle street litter generated from certain types of business premises. There is no restriction on the type of litter that can be controlled and it applies both to litter generated directly by the business concerned AND from its customers/clients of the business even if they drop litter off the premises.

3.3 Street Litter Control Notices (SLCNs) create a 'legal duty' meaning that businesses that generate litter on their shop frontage and in most cases, also, within up to 100m of the business, can be required to clear up the litter and implement measures to prevent the land from becoming defaced again.

- 3.4 Street Litter Control Notices apply to the following types of business:
- Premises used wholly or partly for the sale of food and drink for consumption either off the premises or on the premises if outside and adjacent to the street.
 - Service stations.
 - Recreational venues such as cinemas, theatres, sports facilities and pitches.
 - Banks and building societies with automated teller machines.
 - Betting shops.
 - Premises selling lottery tickets.
 - Premises 'outside' where goods are displayed for sale on or adjacent to the street.
 - Mobile vehicles, stalls and other moveable structures used for commercial or retail activities on a street.
- 3.5 Enforcement officers can help and advise businesses on compliance, but where advice and informal requests to deal with litter problems hasn't worked SLCNs provide an enforcement mechanism which the Local Authority can use. This would place ongoing legal responsibilities onto owners and businesses that are contributing to the problem.
- 3.6 A Street Litter Control Notice is served on the occupier or (if the premises are unoccupied) the owner, so as to place an ongoing obligation on him to comply with the requirement(s) specified for that land.
- 3.7 The Local Authority will inform the person on whom the notice is to be served and allow them a 21 day period in which to make any representations. There is a right of appeal to the magistrates' court against a Street Litter Control Notice.
- 3.8 If a person fails to comply it is an offence with a maximum fine on conviction of £2,500. As an alternative to criminal prosecution the Local Authority may offer the opportunity to pay a fixed penalty notice instead.
- 3.9 Research carried out on behalf of Government by the Keep Britain Tidy organisation shows that all types of food that are consumed outside and disposed of incorrectly become 'fast food' litter. Fast food litter is defined as "any fast food or the packaging sold with the food substance which is found discarded onto "public streets". Therefore, triangular sandwich packaging, drinks cartons and confectionery wrappings are fast food litter, as are burgers, chicken products, potato chips and their containers. Fast food waste is defined as 'any waste from an outlet that sells fast food (as defined above)'.

Fast food waste only becomes a problem if it is not managed, stored, or disposed of correctly and becomes litter.

4 CONCLUSION

4.1 The key points of the Part 4, Chapter 1, of the Act in relation to littering and cleaning of shop fronts are:

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4.1.2 The notice can direct any individual over the age of 16, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again (section 43(3)).

4.1.3 Paragraph 2.5 above provides an example of how Community Protection Orders relate to the cleaning of shops fronts:

“The notice should be issued to someone who can be held responsible for the anti-social behaviour (section 44). For instance, if a small shop were allowing litter to be deposited outside the property and not dealing with the issue, a notice could be issued to the business owner, whereas if a large national supermarket were to cause a similar issue, the company itself or the store manager could be issued with a notice.”

4.1.4 Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice (which attracts a penalty of £100) (section 52) or prosecution. On summary conviction an individual would be liable to a level 4 fine (currently up to £2,500). An organisation is liable to a fine not exceeding £20,000.

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4.1.6 Enforcement officers can help and advise businesses on compliance, but where advice and informal requests to deal with litter problems hasn't worked SLCNs provide an enforcement mechanism which the Local Authority can use. This would place ongoing legal responsibilities onto owners and businesses that are contributing to the problem.

4.1.7 A Street Litter Control Notice is served on the occupier or (if the premises are unoccupied) the owner, so as to place an ongoing obligation on him to comply with the requirement(s) specified for that land.

5 RECOMMENDATION

5.1 That the information detailed above informs the evidence base of this Scrutiny Review.

Brief Author: Tracy Tiff, Scrutiny Officer, on behalf of Councillor Tony Ansell, Chair, Scrutiny Panel 3 – Keep Northampton Tidy

Date: 4 November 2014