

EAST AYRSHIRE COUNCIL

CABINET – 2ND JULY, 2008

PROPOSED CORPORATE ENFORCEMENT UNIT

Report by Head of Legal, Procurement and Regulatory Services

1.0 PURPOSE OF REPORT

- 1.1 To present to Cabinet for consideration and approval a proposal for the development of a Corporate Enforcement Unit (CEU) to support and enhance the operation of all statutory enforcement regimes across a range of Council services which involve the issuing of Fixed Penalty Notices and associated activity.

2.0 BACKGROUND

- 2.1 There are a range of statutory provisions which enable local authorities to take enforcement action through the issuing of Fixed Penalty Notices (FPNs) by duly authorised officers.
- 2.2 At present, such authorised officers exist within various services across the Council and in virtually all cases their enforcement activity forms part of a broader range of duties and responsibilities i.e. as a resource they are not dedicated to enforcement activity on either a full time or a part time basis. Instead, there is a general expectation that they will undertake enforcement activity on an ad hoc basis where the need arises in the course of carrying out their primary duties. In total there are approximately 65 such posts, as set out in Appendix 1 together with an indication of the current FPN authorisations applicable to each post by category.
- 2.3 There are, however, two dedicated posts within Environmental Health which were introduced as part of the Council's arrangements for the implementation of the Smoking, Health and Social Care (Scotland) Act 2005. These officers have the specific remit of enforcing the smoking ban and their posts have hitherto been temporary only as they have previously been funded directly by the Scottish Government.
- 2.4 Following the current Scottish Government's recent move away from ringfenced funding the current position is that there is now funding in the block grant received by Councils to cover this activity from 08/09 onwards.
- 2.5 Against this background it is considered that an opportunity has arisen to develop a more effective approach to this kind of enforcement activity through the introduction of a dedicated Unit which would enhance existing arrangements in a number of ways as set out in further detail in Paragraph 3 below.

3.0 PROPOSAL

- 3.1 It is proposed to create a centralised Corporate Enforcement Unit within the Environmental Health service with direct and ongoing support from Legal Services as and when required.
- 3.2 This unit will be comprised of the two 'smoking ban' officers' posts referred to at para 2.3 above, as the only full time resource. Their responsibilities would be:-
- To carry out regular enforcement activity under all relevant statutory provisions (once they have been duly authorised) thereby supplementing such activity within other services.
 - To initially review, in conjunction with Legal Services, all current authorisations held by all Council employees and identify and implement any action required to ensure that these are all brought up to date and in full compliance with (a) all legislative requirements and (b) the Council's own internal requirements, particularly in terms of the Scheme of Delegation.
 - Thereafter to oversee the ongoing administration of all such authorisations by way of regular review, thereby removing this administrative burden from each service.
 - To co-ordinate the development of appropriate procedures and associated guidance for all authorised employees in order to support their own ongoing enforcement activity.
 - Similarly to co-ordinate the provision of appropriate training, on an ongoing basis, for all relevant employees across the Council. This may be carried out internally by the Enforcement officers and/or legal Services but may also include some external training provision where considered appropriate.
 - To co-ordinate arrangements and planning for specific initiatives as required by Council policy, drawing on existing authorised employees within other services as required. This might involve a particular focus on one issue e.g. litter across the whole Council area, or it might constitute a 'blitz' on one particular geographical area be that a Town Centre or an outlying settlement, comprising enforcement activity across a whole range of statutory provisions, e.g. litter, dog fouling and smoking etc.
 - To provide direct additional resource support as and when required to all Council services in respect of their own ongoing enforcement activity.
- 3.3 In summary, it is not proposed that the Corporate Enforcement Unit replace all current activity, rather that it function to support such activity in order to improve on current outputs, whilst also taking the lead on cross-cutting activity

involving multiple services in order to assist in achieving shared corporate goals.

- 3.4 The CEU would also support related areas of activity which do not involve the issue of FPNs but which are still important in terms of maintaining the local environment through enforcement activity including assisting with the recovery of costs wherever possible for the removal of graffiti and Fly-posting (under Part 6 of the Anti-Social Behaviour (Scotland) Act 2004) and for the removal of abandoned vehicles.

In addition, the CEU would be asked to review other current legislation with a view to bringing forward proposals for its utilisation in East Ayrshire where this does not already happen e.g. dealing with air pollution through stationary vehicles with running engines under the Road Traffic Vehicle Emissions Fixed Penalty (Scotland) Regulations 2003.

- 3.5 As well as liaising effectively with relevant Council services, and developing closer links between existing enforcement officers in areas of activity, the CEU would, with appropriate support from Legal Services as required, also liaise with the many outside agencies with similar interests, including for example the Police and Procurator Fiscal at a local level and various organisations with a national interest in maintaining the environment.

As an example, the Council recently co-operated on 4th June, 2008 with a national litter campaign by Keep Scotland Beautiful which involved a number of Council operatives, working with Police colleagues undertaking patrols at various locations in East Ayrshire intended to both raise public awareness on litter issues and prompt enforcement action where appropriate, leading to 10 FPNs being issued during that day.

It is envisaged that through the proposed CEU the Council will be able to develop a range of similar initiatives for ourselves on a more co-ordinated basis and that these specific additional initiatives will in turn supplement an enhanced level of regular enforcement activity via all of the Council services identified in Appendix 1, as directly and indirectly supported by the CEU.

- 3.6 Further, when undertaking the proposed review of current authorisations the CEU would also be asked to identify any suitable opportunities to (a) extend the range of authorisations(s) held by currently authorised staff where appropriate and/or (b) to authorise new categories of staff to issue FPNs wherever this might be considered appropriate (subject to normal management and consultative processes).
- 3.7 Finally, it is not intended that the CEU will focus purely on enforcement, but rather that they will also liaise with relevant Council services and the in-house Public Relations team to promote better public awareness of the impact of litter, dog fouling, etc. on the local environment and, indeed, Council resources in order to supplement direct enforcement activity by trying in various appropriate ways to also address the issues at their source.

4.0 FINANCIAL IMPLICATIONS

- 4.1 As stated in Paragraph 2.3 there are currently two temporary Environmental Health Technician posts within Environmental Health and it is proposed that these posts should now be made permanent. The financial implications of this can be accommodated within the Corporate Support revenue estimate.
- 4.2 It is proposed that these posts be used to populate the Corporate Enforcement Unit. Although, these posts will be met from current resources, the costs could possibly be offset against increased income levels as an enhanced corporate approach to enforcement activity should lead to increased numbers of Fixed Penalty Notices being issued (with the Council retaining the proceeds).
- 4.3 At present, in most cases payment requires to be made in the first instance to the District Court office, who receive and process all payments with 90% being passed to the originating service and 10% being retained as a handler's fee. FPNs not paid within the relevant statutory period are then passed to the Debt Recovery Team within Legal Services for recovery by way of civil diligence. The District Court function is due to transfer out to the Scottish Courts Service by October 2009 (for East Ayrshire) but the recovery of most Fixed Penalty Notices will remain with local authorities. It would be proposed that the recovery of FPNs would transfer directly to the Debt Recovery Team after the transfer of the District Court function, but it is not possible to quantify at this stage the likely costs, if any, of any future additional staffing requirement arising from the issuing of increased numbers of FPNs. Certainly, present levels of activity could readily be assumed by the Debt Recovery Team without any additional resource requirement.
- 4.4 Confusion around the funding arrangements meant that this element of previously ringfenced grant was omitted from the review, however, it is evident that a saving of £4000 can be made available for redirection.

5.0 LEGAL/POLICY/COMMUNITY PLAN IMPLICATIONS

- 5.1 The proposed CEU would, with appropriate dedicated support from Legal Services, ensure on an ongoing basis full legal compliance across all relevant Council services in terms of levels and currency of staff authorisations and full written procedures and guidance for the issue of, and subsequent recovery of sums due under FPNs.
- 5.2 The operation of the CEU would support relevant Council services in their delivery of current and future Council policy insofar as it relates to the protection of the environment.
- 5.3 In particular, the proposed operating arrangements for the CEU would support the Council in meeting its Improving the Environment objective in terms of the current Community Plan.

6.0 RECOMMENDATIONS

6.1 It is recommended that Cabinet

- (i) agree to the permanent establishment of a Corporate Enforcement Unit on the basis outlined in this report
- (ii) otherwise to note the contents of this report.

David Mitchell
Head of Legal, Procurement and Regulatory Services
23rd May 2008

LIST OF BACKGROUND PAPERS

Nil

Any person who wishes any further information should contact David Mitchell, Head of Legal, Procurement & Regulatory Services (01563 576061) or Paul Todd, Principal Officer, Environment Health (01563 574021)

Implementation officer – David Mitchell, Head of Legal Procurement & Regulatory Services

APPENDIX 1

	ROAD TRAFFIC ACT 1991	ENVIRONMENTAL PROTECTION ACT 1990			DOG FOULING (SCOTLAND) ACT 2003	SMOKING, HEALTH & SOCIAL CARE (SCOTLAND) ACT 2005	ANTI-SOCIAL BEHAVIOUR (SCOTLAND) ACT 2004
	<u>Parking</u>	<u>Littering</u>	<u>Fly- Tipping</u>	<u>Illegal Dumping</u>	<u>Dog Fouling</u>	<u>Smoking</u>	<u>Noise</u>
<u>Neighbourhood Services</u>							
1. Community Wardens - 24		√			√		
2. Roads – Car Parks - 6 (5 + 1 Supervisor)	√						
3. Cleansing - 12		√	√	√			
4. Outdoor Amenities - 2		√	√				
<u>Corporate Support</u>							
5. Environmental Health (Food Team) - 6		√			√	√	
5A Environmental Health (Public Health) - 4		√			√	√	√
5B Environmental Health (Pest Control) - 3					√		
5C Environmental Health (Smoking Enforcement Team) - 2		√			√	√	√
5D Environmental Health (Health & Safety) - 2		√			√	√	
5E Environmental Health (Anti- Social Behaviour Noise) - 1							√
6. Liquor Licensing - 2 Licensing Standards Officers						√	
7. Local Government Licensing - 1 Taxi Enforcement Officer							