



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART IV

#### LITTER ETC

##### Modifications etc. (not altering text)

- C1** Pt. IV amended: by S.I. 1991/476, **art. 2**; (1.9.1994) by 1993 c. 35, s. 298, **Sch. 18 para.10**; S.I. 1994/2038, **art. 3**.
- C2** Pt. IV extended: by S.I.1991/961, **art. 2**; (E.W.) (1.11.1996) by 1996 c. 56, ss. 19, 583(2), **Sch. 1 para.10** (with ss. 1(4), 561, 562, Sch. 39)

#### *Provisions relating to litter*

#### **86 Preliminary.**

- (1) The following provisions have effect for the purposes of this Part.
- (2) In England and Wales the following are “principal litter authorities”—
- (a) a county council,
  - [<sup>F1</sup>(aa) a county borough council,]
  - (b) a district council,
  - (c) a London borough council,
  - (d) the Common Council of the City of London, and
  - (e) the Council of the Isles of Scilly;
- but the Secretary of State may, by order, designate other descriptions of local authorities as litter authorities for the purposes of this Part; and any such authority shall also be a principal litter authority.
- (3) In Scotland the following are “principal litter authorities”—
- [<sup>F2</sup>(a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994]

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- (c) a joint board.
- (4) Subject to subsection (8) below, land is “relevant land” of a principal litter authority if, not being relevant land falling within subsection (7) below, it is open to the air and is land (but not a highway or in Scotland a public road) which is under the direct control of such an authority to which the public are entitled or permitted to have access with or without payment.
- (5) Land is “Crown land” if it is land—
- (a) occupied by the Crown Estate Commissioners as part of the Crown Estate,
  - (b) occupied by or for the purposes of a government department or for naval, military or air force purposes, or
  - (c) occupied or managed by any body acting on behalf of the Crown;
- is “relevant Crown land” if it is Crown land which is open to the air and is land (but not a highway or in Scotland a public road) to which the public are entitled or permitted to have access with or without payment; and “the appropriate Crown authority” for any Crown land is the Crown Estate Commissioners, the Minister in charge of the government department or the body which occupies or manages the land on the Crown’s behalf, as the case may be.
- (6) Subject to subsection (8) below, land is “relevant land” of a designated statutory undertaker if it is land which is under the direct control of any statutory undertaker or statutory undertaker of any description which may be designated by the Secretary of State, by order, for the purposes of this Part, being land to which the public are entitled or permitted to have access with or without payment or, in such cases as may be prescribed in the designation order, land in relation to which the public have no such right or permission.
- (7) Subject to subsection (8) below, land is “relevant land” of a designated educational institution if it is open to the air and is land which is under the direct control of the governing body of or, in Scotland, of such body or of the education authority responsible for the management of, any educational institution or educational institution of any description which may be designated by the Secretary of State, by order, for the purposes of this Part.
- (8) The Secretary of State may, by order, designate descriptions of land which are not to be treated as relevant Crown land or as relevant land of principal litter authorities, of designated statutory undertakers or of designated educational institutions or of any description of any of them.
- (9) Every highway maintainable at the public expense other than a trunk road which is a special road is a “relevant highway” and the local authority which is, for the purposes of this Part, “responsible” for so much of it as lies within its area is, subject to any order under subsection (11) below—
- (a) in Greater London, the council of the London borough or the Common Council of the City of London;
  - (b) <sup>F3</sup>in England]outside Greater London, the council of the district;
  - <sup>F4</sup>[(bb) in Wales, the council of the county or county borough;] and
  - (c) the Council of the Isles of Scilly.
- (10) In Scotland, every public road other than a trunk road which is a special road is a “relevant road” and the local authority which is, for the purposes of this Part, “responsible” for so much of it as lies within <sup>F5</sup>their]area is, subject to any order

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under subsection (11) below, [the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994].

(11) The Secretary of State may, by order, as respects relevant highways or relevant roads, relevant highways or relevant roads of any class or any part of a relevant highway or relevant road specified in the order, transfer the responsibility for the discharge of the duties imposed by section 89 below from the local authority to the highway or roads authority; but he shall not make an order under this subsection unless—

- (a) (except where he is the highway or roads authority) he is requested to do so by the highway or roads authority;
- (b) he consults the local authority; and
- (c) it appears to him to be necessary or expedient to do so in order to prevent or minimise interference with the passage or with the safety of traffic along the highway or, in Scotland, road in question;

and where, by an order under this subsection, responsibility for the discharge of those duties is transferred, the authority to which the transfer is made is, for the purposes of this Part, “responsible” for the highway, road or part specified in the order.

(12) [<sup>F6</sup>Land is “relevant land within a litter control area of a local authority” if it is land included in an area designated by the local authority under section 90 below to which the public are entitled or permitted to have access with or without payment.]

(13) A place on land shall be treated as “open to the air” notwithstanding that it is covered if it is open to the air on at least one side.

(14) The Secretary of State may, by order, apply the provisions of this Part which apply to refuse to any description of animal droppings in all or any prescribed circumstances subject to such modifications as appear to him to be necessary.

(15) Any power under this section may be exercised differently as respects different areas, different descriptions of land or for different circumstances.

#### Textual Amendments

- F1** S. 86(2)(aa) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(6)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
- F2** S. 86(3)(a) substituted (S.) (1.4.1996) for paras. (a)(b) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(10)(a)**; S.I. 1996/323, art. 4(1)(c).
- F3** Words in s. 86(9)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(7)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
- F4** S. 86(9)(bb) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(7)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch.1**.
- F5** Words in s. 86(10) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(10)(b)**; S.I. 1996/323, art. 4(1)(c).
- F6** S. 86(12) repealed (E.W.) (6.3.2007 for E and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, art. 4(oo); S.I. 2007/390, art. 2(c)

#### Commencement Information

- II** S. 86 partly in force; s. 86 not in force at Royal Assent see s. 164(3); s. 86(2)(6)-(8)(11)(14)(15) wholly in force at 14.1.1991 and s. 86(1)(4)(5)(9)(13) in force (E.W.) at 13.2.1991 by S.I. 1991/96, arts. 2, 3; s. 86(3)(10) wholly in force at 1.4.1991, s. 86(1)(4)(5)(13) in force (S.) at 1.4.1991 and s. 86(12) wholly in force at 1.6.1991 by S.I. 1991/1042, arts. 2, 3.

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## 87 Offence of leaving litter. **E+W**

- [<sup>F7</sup>(1) 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.
- (2) This section applies to any place in the area of a principal litter authority which is open to the air, subject to subsection (3) below.
- (3) This section does not apply to a place which is “open to the air” for the purposes of this Part by virtue of section 86(13) above if the public does not have access to it, with or without payment.
- (4) It is immaterial for the purposes of this section whether the litter is deposited on land or in water.
- (4A) No offence is committed under subsection (1) above where the depositing of the litter is—
- (a) authorised by law; or
  - (b) done by or with the consent of the owner, occupier or other person having control of the place where it is deposited.
- (4B) A person may only give consent under subsection (4A)(b) above in relation to the depositing of litter in a lake or pond or watercourse if he is the owner, occupier or other person having control of—
- (a) all the land adjoining that lake or pond or watercourse; and
  - (b) all the land through or into which water in that lake or pond or watercourse directly or indirectly discharges, otherwise than by means of a public sewer.
- (4C) In subsection (4B) above, “lake or pond”, “watercourse” and “public sewer” have the same meanings as in section 104 of the Water Resources Act 1991.]
- (5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) A local authority, with a view to promoting the abatement of litter, may take such steps as the authority think appropriate for making the effect of subsection (5) above known to the public in their area.
- (7) In any proceedings in Scotland for an offence under this section it shall be lawful to convict the accused on the evidence of one witness.

### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

### Textual Amendments

- F7** S. 87(1)-(4C) substituted (E.W.) (7.6.2005) for s. 87(1)-(4) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 18**, 108(4)(b)

### Modifications etc. (not altering text)

- C3** S. 87 applied (with modifications) (19.9.2007) by [London Local Authorities Act 2007 \(c. ii\)](#), **ss. 1(3)-(5)**, 31, **Sch. 2 Pt. 1**
- C4** S. 87 applied (20.9.2000) by [2000 c. vii](#), **ss. 1(1)**, 21

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#### Commencement Information

- I2** S. 87 partly in force; s. 87 not in force at Royal Assent see s. 164(2); s. 87(1) (2) (3)(a)-(e) (4)-(6) in force (E.W) 13.2.1991 by [S.I. 1991/96](#), [art. 3](#)  
S. 87(7) in force at 1.4.1991; s. 87(1)(2)(3)(a)-(e) (4)-(6) in force (S.) 1.4.1991 and s. 87(3)(f) in force 1.6.1991 see s. 164(3) and [S.I. 1991/1042](#), [arts. 2, 3](#)

#### 87 Offence of leaving litter. **S**

- (1) If any person throws down, drops or otherwise deposits in, into or from any place to which this section applies, and leaves, any thing whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any place to which this section applies, he shall, subject to subsection (2) below, be guilty of an offence.
- (2) No offence is committed under this section where the depositing and leaving of the thing was—
  - (a) authorised by law, or
  - (b) done with the consent of the owner, occupier or other person or authority having control of the place in or into which that thing was deposited.
- (3) This section applies to any public open place and, in so far as the place is not a public open place, also to the following places—
  - (a) any relevant highway or relevant road and any trunk road which is a special road;
  - (b) any place on relevant land of a principal litter authority;
  - (c) any place on relevant Crown land;
  - (d) any place on relevant land of any designated statutory undertaker;
  - (e) any place on relevant land of any designated educational institution;
  - (f) any place on relevant land within a litter control area of a local authority.
- (4) In this section “public open place” means a place in the open air to which the public are entitled or permitted to have access without payment; and any covered place open to the air on at least one side and available for public use shall be treated as a public open place.
- (5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) A local authority, with a view to promoting the abatement of litter, may take such steps as the authority think appropriate for making the effect of subsection (5) above known to the public in their area.
- (7) In any proceedings in Scotland for an offence under this section it shall be lawful to convict the accused on the evidence of one witness.

#### Extent Information

- E4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

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#### Modifications etc. (not altering text)

- C3** S. 87 applied (with modifications) (19.9.2007) by [London Local Authorities Act 2007 \(c. ii\), ss. 1\(3\)-\(5\), 31, Sch. 2 Pt. 1](#)
- C4** S. 87 applied (20.9.2000) by [2000 c. vii, ss. 1\(1\), 21](#)

#### Commencement Information

- I2** S. 87 partly in force; s. 87 not in force at Royal Assent see s. 164(2); s. 87(1) (2) (3)(a)-(e) (4)-(6) in force (E.W) 13.2.1991 by [S.I. 1991/96, art. 3](#)
- S. 87(7) in force at 1.4.1991; s. 87(1)(2)(3)(a)-(e) (4)-(6) in force (S.) 1.4.1991 and s. 87(3)(f) in force 1.6.1991 see s. 164(3) and [S.I. 1991/1042, arts. 2, 3](#)

## 88 Fixed penalty notices for leaving litter. **E+W**

- (1) Where on any occasion an authorised officer of a litter authority finds a person who he has reason to believe has on that occasion committed an offence under section 87 above in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) Where a person is given a notice under this section in respect of an offence—
  - (a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
  - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—
  - (a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the person to whom and the address at which the fixed penalty may be paid; and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (4) Where a letter is sent in accordance with subsection (3) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (5) The form of notices under this section shall be such as the Secretary of State may by order prescribe.
- <sup>F8</sup>(6) The fixed penalty payable in pursuance of a notice under this section is payable to the litter authority whose authorised officer gave the notice.
- (6A) The amount of a fixed penalty payable in pursuance of a notice under this section—
  - (a) is the amount specified by a principal litter authority in relation to its area (whether the penalty is payable to that or another authority), or
  - (b) if no amount is so specified, is £75.

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- (6B) The reference in subsection (6A) above to a principal litter authority does not include an English county council for an area for which there is also a district council.
- (7) The litter authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.]
- (8) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of—
    - (i) in England and Wales, the chief finance officer of the litter authority; or
    - (ii) in Scotland, the proper officer; and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- shall be evidence of the facts stated.
- [<sup>F9</sup>(8A) If an authorised officer of a litter authority proposes to give a person a notice under this section, the officer may require the person to give him his name and address.
- (8B) A person commits an offence if—
- (a) he fails to give his name and address when required to do so under subsection (8A) above, or
  - (b) he gives a false or inaccurate name or address in response to a requirement under that subsection.
- (8C) A person guilty of an offence under subsection (8B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]
- (9) For the purposes of this section the following are “litter authorities”—
- (a) any principal litter authority, other than [<sup>F10</sup>an English county] council [<sup>F11</sup>, a regional council] or a joint board;
  - (b) any [<sup>F12</sup>English] county council [<sup>F13</sup>, regional council] or joint board designated by the Secretary of State, by order, in relation to such area as is specified in the order (not being an area in a National Park);
  - <sup>F14</sup>(c) . . . . .
  - <sup>F14</sup>(d) . . . . .
  - (e) the Broads Authority.
  - [<sup>F15</sup>(f) a parish or community council.]
- (10) In this section—
- [<sup>F16</sup>“authorised officer”, in relation to a litter authority, means—
  - (a) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under this section;
  - (b) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and
  - (c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices;]
- “chief finance officer”, in relation to a litter authority, means the person having responsibility for the financial affairs of the authority;
- <sup>F17</sup> . . .

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F17 . . .

“proper officer” means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the <sup>M1</sup>Local Government (Scotland) Act 1973 (financial administration).

[<sup>F18</sup>(11) The appropriate person may by regulations prescribe conditions to be satisfied by a person before a parish or community council may authorise him in writing for the purpose of giving notices under this section.]

#### Extent Information

- E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F8** S. 88(6)(6A)(6B)(7) substituted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) for s. 88(6)(7) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 19(2)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with **art. 4(3)(a)**); S.I. 2006/2797, **art. 4(f)** (with **art. 10(3)(a)**); S.I. 2007/739
- F9** S. 88(8A)-(8C) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 19(3)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with **art. 4(3)(a)**); S.I. 2006/2797, **art. 4(f)** (with **art. 10(3)(a)**); S.I. 2007/739
- F10** Words in s. 88(9)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(a)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, **art. 3**, **Sch. 1**.
- F11** Words in s. 88(9)(a) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(12), **Sch. 14**; S.I. 1996/323, **art. 4(1)(c)(d)**, **Sch. 2**
- F12** Word in s. 88(9)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(b)** (with s. 54(7), Sch. 17 para. 22(1), 23(2)); S.I. 1996/396, **art. 3**, **Sch. 1**.
- F13** Words in s. 88(9)(b) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(12), **Sch. 14**; S.I. 1996/323, **art. 4(1)(c)(d)**, **Sch. 2**
- F14** S. 88(9)(c)(d) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with **ss. 7(6)**, 115, 117); S.I. 1996/2560, **art. 2**, **Sch.**
- F15** S. 88(9)(f) inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 19(4)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with **art. 4(3)(a)**); S.I. 2006/2797, **art. 4(f)** (with **art. 10(3)(a)**); S.I. 2007/739
- F16** In s. 88(10) definition of "authorised officer" substituted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 19(5)**, 108; S.I. 2006/768, **art. 3**; S.I. 2006/795, **art. 2(3)**, Sch. 2 (with **art. 4(3)(a)**); S.I. 2006/2797, **art. 4(f)** (with **art. 10(3)(a)**); S.I. 2007/739
- F17** Definitions in s. 88(10) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with **ss. 7(6)**, 115, 117); S.I. 1996/2560, **art. 2**, **Sch.**
- F18** S. 88(11) inserted (E.W.) (14.3.2006 for E., 16.3.2006 for certain purposes for W. and 15.3.2007 in so far as not already in force for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 19(6)**, 108; S.I. 2006/795, **art. 2(1)**, Sch. 1 (with **art. 4(3)(a)**); S.I. 2006/768, **art. 3**; S.I. 2006/2797, **art. 4(f)** (with **art. 10(3)(a)**); S.I. 2007/739

#### Modifications etc. (not altering text)

- C5** S. 88 applied (with modifications) (19.9.2007) by [London Local Authorities Act 2007 \(c. ii\)](#), **ss. 1(3)-(5)**, 31, **Sch. 2 Pt. 2**



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- C6** S. 88 extended (with modifications) (E.W.) (19.9.1995) by 1995 c. 25, ss. 70, 125(3), **Sch. 9 para. 12(b)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**)  
S. 88(2)-(8) applied (with modifications) (E.W.) (17.8.1996) by 1996 c. 20, ss. 4(2)(3), 8(2) (with s. 1) (as amended (1.4.2002) by S.I. 2002/425, **art. 2**)
- C7** S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 38, **Sch. 4 Pt. 1 para. 1(2)(d)**; S.I. 2002/2750, **art. 2(a)(ii)**  
S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 41, **Sch. 5 para. 1(2)(c)**; S.I. 2002/2750, **art. 2(a)(iii)**

#### Commencement Information

- I3** S. 88 wholly in force at 13.2.1991; s. 88 not in force at Royal Assent, see s. 164(2); s. 88(7)(9)(b) in force at 14.1.1991 and s. 88(1)-(4)(6)(8)(9)(a)(c)-(e)(10) in force for E.W. at 13.2.1991 by S.I. 1991/96, **arts. 2, 3**; s. 88(1)-(4)(6)(8)(9)(a)(c)(d)(10) in force for S. at 1.4.1991 by S.I. 1991/1042, **art. 2**

#### Marginal Citations

- M1** 1973 c. 65.

## 88 Fixed penalty notices for leaving litter. **S**

- (1) Where <sup>F69</sup> . . .  
[<sup>F70</sup>(a)] an authorised [<sup>F71</sup>person or a constable]<sup>F69</sup>. . . has reason to believe [<sup>F72</sup>that a person has] committed an offence under section 87 above <sup>F73</sup>...  
<sup>F73</sup>(b) . . . . .

he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

- [<sup>F74</sup>(1A) Where a constable gives a notice under this section to a person, he shall, no later than 24 hours after the giving of the notice, send a copy of it to the litter authority in whose area the offence was committed.]

- (2) Where a person is given a notice under this section in respect of an offence—  
(a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and  
(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—  
(a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;  
(b) the amount of the fixed penalty; and  
(c) the person to whom and the address at which the fixed penalty may be paid; and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (4) Where a letter is sent in accordance with subsection (3) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

*Status: Point in time view as at 31/01/2017.*

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- (5) The form of notices under this section shall be such as the Secretary of State may by order prescribe.
- <sup>F75</sup>(5A) A fixed penalty payable in pursuance of a notice under this section shall be payable
- <sup>F76</sup>(a) [ where the notice is given by an officer of a litter authority authorised as mentioned in paragraph (a) of the definition of “authorised person” in subsection (10) below, to that litter authority;
- (b) where the notice is given by an officer of Loch Lomond and The Trossachs National Park Authority authorised as mentioned in paragraph (b) of that definition, to that Authority.]]
- <sup>F77</sup>(6) The fixed penalty payable <sup>F78</sup> . . . in pursuance of a notice under this section shall, subject to subsection (7) below, be [<sup>F79</sup>£80]; and as respects the sums received by—
- <sup>F80</sup>(a) [<sup>F81</sup>a litter] authority, those sums if received by an authority in Scotland, shall [<sup>F82</sup>accrue to the litter authority]
- <sup>F83</sup>(b) Loch Lomond and The Trossachs National Park Authority, shall accrue to that Authority.]
- (7) The Secretary of State may by order substitute a different amount [<sup>F84</sup>(not exceeding level 2 on the standard scale)] for the amount for the time being specified as the amount of the fixed penalty in subsection (6) above.
- (8) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of—
- (i) in England and Wales, the chief finance officer of the litter authority;
- or
- (ii) in Scotland, [<sup>F85</sup>a proper officer]; and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- shall be evidence of the facts stated.
- <sup>F86</sup>(8A) In subsection (8) above, “proper officer” means—
- (a) in a case where a notice under this section is given as mentioned in paragraph (a) of subsection (5A) above, the officer who has, as respects the litter authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration);
- (b) in a case where a notice is given as mentioned in paragraph (b) of that subsection, the proper officer for that Authority appointed under paragraph 12(3) of schedule 2 to the National Parks (Scotland) Act 2000.
- (8B) If an authorised person proposes to give a person a notice under this section, the authorised person may require the person to give him his name and address.
- (8C) A person commits an offence if he fails to give his name and address when required to do so under subsection (8B) above.
- (8D) A person who commits an offence under subsection (8C) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]
- (9) For the purposes of this section the following are “litter authorities”—
- (a) any principal litter authority, other than [<sup>F10</sup>an English county] council [<sup>F11</sup>, a regional council] or a joint board;

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(b) any [<sup>F12</sup>English] county council [<sup>F13</sup>, regional council] or joint board designated by the Secretary of State, by order, in relation to such area as is specified in the order (not being an area in a National Park);

<sup>F14</sup>(c) .....

<sup>F14</sup>(d) .....

(e) the Broads Authority.

(10) In this section—

[<sup>F87</sup>“authorised person” means—

(a) an officer of a litter authority who is authorised in writing by the authority for the purpose of issuing notices under this section in relation to an offence under section 87 above committed in the area of the authority;

(b) an officer of Loch Lomond and The Trossachs National Park Authority who is authorised in writing by the Authority for the purpose of issuing notices under this section in relation to an offence under section 87 above committed in the area designated as the National Park for which the Authority is established; or

(c) such other persons as may be specified by order made by the Scottish Ministers.]

“chief finance officer”, in relation to a litter authority, means the person having responsibility for the financial affairs of the authority;

<sup>F17</sup>  
...

<sup>F17</sup>  
...

<sup>F88</sup>  
...

[<sup>F89</sup>(10A) The Scottish Ministers may by order make such modifications of this section as they consider necessary or expedient in connection with the specification of a person by an order under paragraph (c) of the definition of “authorised person” in subsection (10) above.

(10B) An order under subsection (10A) above may include—

(a) provision applying any provision of this section to such a person with such modifications as may be specified in the order;

(b) provision for any such provision not to apply in relation to such a person.]

#### Extent Information

**E5** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

**F10** Words in s. 88(9)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(a)** (with s. 54(7), **Sch. 17 para. 22(1), 23(2)**); S.I. 1996/396, art. 3, **Sch. 1**.

**F11** Words in s. 88(9)(a) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), **Sch. 13 para. 167(12)**, **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

**F12** Word in s. 88(9)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(8)(b)** (with s. 54(7), **Sch. 17 para. 22(1), 23(2)**); S.I. 1996/396, art. 3, **Sch. 1**.

**F13** Words in s. 88(9)(b) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), **Sch. 13 para. 167(12)**, **Sch. 14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch. 2**

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- F14** S. 88(9)(c)(d) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F17** Definitions in s. 88(10) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F69** Words in s. 88(1) repealed (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(2)(a)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F70** Words in s. 88(1) renumbered (S.) (28.10.2004) as s. 88(1)(a) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(2)(c)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F71** Words in s. 88(1)(a) substituted (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(a)(i)**; S.S.I. 2014/160, art. 2(3)
- F72** Words in s. 88(1) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(2)(b)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F73** Words in s. 88(1) repealed (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(a)(ii)**; S.S.I. 2014/160, art. 2(3)
- F74** S. 88(1A) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(3)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F75** S. 88(5A) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(4)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F76** S. 88(5A)(a)(b) substituted for words (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(b)**; S.S.I. 2014/160, art. 2(3)
- F77** By The Litter and Dog Fouling (Fixed Penalty) (Wales) Order 2004 (S.I. 2004/909), **art. 2(b)**, it is provided (W.) (1.4.2004) that any surviving reference to £25 in s. 88(6) is hereby repealed
- F78** Words in s. 88(6) repealed (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(5)(a)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F79** Sum in s. 88(6) substituted (S.) (1.4.2014) by The Litter (Fixed Penalties) (Scotland) Order 2013 (S.S.I. 2013/315), arts. 1(1), **3(b)**
- F80** Words in s. 88(6) renumbered as s. 88(6)(a) (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(c)(i)**; S.S.I. 2014/160, art. 2(3)
- F81** Words in s. 88(6) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(5)(b)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F82** Words in s. 88(6)(b) substituted (S.) (10.3.2008) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 80, 84, Sch. para. 8(b)**; S.S.I. 2008/42, **art. 3(1)**, Sch.
- F83** S. 88(6)(b) inserted (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(c)(ii)**; S.S.I. 2014/160, art. 2(3)
- F84** Words in s. 88(7) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 56(6)**, 145(2); S.S.I. 2004/420, **art. 3**, Sch. 1
- F85** Words in s. 88(8)(a)(ii) substituted (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(d)**; S.S.I. 2014/160, art. 2(3)
- F86** S. 88(8A)-(8D) inserted (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(e)**; S.S.I. 2014/160, art. 2(3)
- F87** Words in s. 88(10) substituted (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(f)(i)**; S.S.I. 2014/160, art. 2(3)
- F88** Words in s. 88(10) repealed (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(f)(ii)**; S.S.I. 2014/160, art. 2(3)
- F89** S. 88(10A)(10B) inserted (S.) (1.4.2015) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 11(4)(g)**; S.S.I. 2014/160, art. 2(3)

#### Modifications etc. (not altering text)

- C5** S. 88 applied (with modifications) (19.9.2007) by London Local Authorities Act 2007 (c. ii), ss. 1(3)-(5), 31, **Sch. 2 Pt. 2**
- C6** S. 88 extended (with modifications) (E.W.) (19.9.1995) by 1995 c. 25, ss. 70, 125(3), **Sch. 9 para. 12(b)** (with ss. 7(6), 115, 117, Sch. 8 para. 7)

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- S. 88(2)-(8) applied (with modifications) (E.W.) (17.8.1996) by 1996 c. 20, ss. 4(2)(3), 8(2) (with s. 1) (as amended (1.4.2002) by S.I. 2002/425, art. 2)
- C7** S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 38, Sch. 4 Pt. 1 para. 1(2)(d); S.I. 2002/2750, art. 2(a)(ii)
- S. 88 extended (2.12.2002) by Police Reform Act 2002 (c. 30), s. 41, Sch. 5 para. 1(2)(c); S.I. 2002/2750, art. 2(a)(iii)

#### Commencement Information

- I3** S. 88 wholly in force at 13.2.1991; s. 88 not in force at Royal Assent, see s. 164(2); s. 88(7)(9)(b) in force at 14.1.1991 and s. 88(1)-(4)(6)(8)(9)(a)(c)-(e)(10) in force for E.W. at 13.2.1991 by S.I. 1991/96, arts. 2, 3; s. 88(1)-(4)(6)(8)(9)(a)(c)(d)(10) in force for S. at 1.4.1991 by S.I. 1991/1042, art. 2

## 89 Duty to keep land and highways clear of litter etc.

- (1) It shall be the duty of—
- (a) each local authority, as respects any relevant highway or, in Scotland, relevant road for which it is responsible,
  - (b) the Secretary of State, as respects any trunk road which is a special road [<sup>F19</sup>(other than one to which paragraph (ba)(i) applies)] and any relevant highway or relevant road for which he is responsible,
  - [<sup>F20</sup>(ba) a strategic highways company as respects—
    - (i) any trunk road which is a special road for which it is the highway authority, and
    - (ii) any relevant highway for which it is responsible.]
    - (c) each principal litter authority, as respects its relevant land,
    - (d) the appropriate Crown authority, as respects its relevant Crown land,
    - (e) each designated statutory undertaker, as respects its relevant land, [<sup>F21</sup>and]
    - (f) the governing body of each designated educational institution or in Scotland such body or, as the case may be, the education authority responsible for the management of the institution, as respects its relevant land, [<sup>F22</sup>and
    - (g) the occupier of any relevant land within a litter control area of a local authority,]
- to ensure that the land is, so far as is practicable, kept clear of litter and refuse.
- (2) Subject to subsection (6) below, it shall also be the duty of—
- (a) each local authority, as respects any relevant highway or relevant road for which it is responsible,
  - (b) the Secretary of State, as respects any trunk road which is a special road [<sup>F23</sup>(other than one to which paragraph (c)(i) applies)] and any relevant highway or relevant road for which he is responsible,
  - [<sup>F24</sup>(c) a strategic highways company as respects—
    - (i) any trunk road which is a special road for which it is the highway authority, and
    - (ii) any relevant highway for which it is responsible.]
- to ensure that the highway or road is, so far as is practicable, kept clean.
- (3) In determining what standard is required, as respects any description of land, highway or road, for compliance with subsections (1) and (2) above, regard shall be had to

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the character and use of the land, highway or road as well as the measures which are practicable in the circumstances.

- (4) Matter of any description prescribed by regulations made by the Secretary of State for the purposes of subsections (1)(a) and (2) above shall be litter or refuse to which the duties imposed by those subsections apply as respects relevant highways or relevant roads whether or not it would be litter or refuse apart from this subsection.
- (5) It shall be the duty of a local authority, when discharging its duty under subsection (1) (a) or (2) above as respects any relevant highway or relevant road, to place and maintain on the highway or road such traffic signs and barriers as may be necessary for giving warning and preventing danger to traffic or for regulating it and afterwards to remove them as soon as they cease to be necessary for those purposes; but this subsection has effect subject to any directions given under subsection (6) below.
- (6) In discharging its duty under subsection (1)(a) or (2) above to keep clear of litter and refuse or to clean any relevant highway or relevant road for which it is responsible, the local authority shall comply with any directions given to it by the highway or roads authority with respect to—
- (a) the placing and maintenance of any traffic signs or barriers;
  - (b) the days or periods during which clearing or cleaning shall not be undertaken or undertaken to any extent specified in the direction;
- and for the purpose of enabling it to discharge its duty under subsection (1)(a) or (2) above as respects any relevant highway or relevant road the local authority may apply to the highway authority or roads authority for that authority to exercise its powers under [<sup>F25</sup>section 14(1) or (2)] of the <sup>M2</sup>Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic).
- [<sup>F26</sup>(6A) The Scottish Ministers may give to any person subject to a duty imposed by subsection (1) or (2) above such directions as they consider necessary or expedient for securing compliance by such person with such duty.
- (6B) A person to whom a direction is given under subsection (6A) shall comply with the direction.
- (6C) A direction under subsection (6A) may—
- (a) be given generally or to a specific person;
  - (b) make different provision for different persons and different cases or circumstances;
  - (c) include provision specifying, in relation to any factor by reference to which a person's discharging of any such duty can be measured, standards to be met by the person.
- (6D) The Scottish Ministers shall—
- (a) cause—
    - (i) any direction under subsection (6A) above; and
    - (ii) any variation or revocation of such a direction,
 to be published; and
  - (b) cause copies of each such direction, variation or revocation to be made available to the public.]

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- (7) The Secretary of State shall prepare and issue a code of practice for the purpose of providing practical guidance on the discharge of the duties imposed by subsections (1) and (2) above.
- (8) Different codes of practice may be prepared and issued under subsection (7) above for different areas.
- (9) The Secretary of State may issue modifications of, or withdraw, a code issued under subsection (7) above; but where a code is withdrawn, he shall prepare and issue a new code under that subsection in substitution for it.
- (10) Any person subject to any duty imposed by subsection (1) or (2) above shall have regard to the code of practice in force under subsection (7) above in discharging that duty.
- (11) A draft code prepared under subsection (7) above shall be laid before both Houses of Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the code was so laid, or if the draft is laid on different days, the later of the two days.
- (12) If, within the period mentioned in subsection (11) above, either House resolves that the code the draft of which was laid before it should not be issued, the Secretary of State shall not issue that code.
- (13) No account shall be taken in reckoning any period of 40 days for the purposes of <sup>F27</sup>subsection (11) above] of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- <sup>F28</sup>(13A) Subsections (11) to (13) shall not apply in respect of a draft code prepared under subsection (7) above which relates only to Scotland and such a code shall be laid before the Scottish Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the code was so laid.
- (13B) If within the period mentioned in subsection (13A) above the Scottish Parliament resolves that the code, the draft of which was laid before it, should not be issued the Scottish Ministers shall not issue that code.
- (13C) No account shall be taken in reckoning any period of 40 days for the purposes of subsection (13A) above of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.]
- (14) In this section “traffic sign” has the meaning given in section 64(1) of the <sup>M3</sup>Road Traffic Regulation Act 1984.

#### Textual Amendments

- F19** Words in s. 89(1)(b) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), [Sch. 1 para. 111\(2\)\(a\)](#); S.I. 2015/481, reg. 2(a)
- F20** S. 89(1)(ba) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), [Sch. 1 para. 111\(2\)\(b\)](#); S.I. 2015/481, reg. 2(a)
- F21** Word in s. 89(1)(e) inserted (6.3.2007 for E. and 18.1.2008 for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), ss. 106, 108, [Sch. 4 para. 5](#); S.I. 2007/390, [art. 2\(a\)](#); S.I. 2007/3371, [art. 2\(a\)](#)

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- F22** S. 89(1)(g) and preceding word repealed (6.3.2007 for E. and 15.3.2007 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**
- F23** Words in s. 89(2)(b) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 111(3)(a)**; S.I. 2015/481, **reg. 2(a)**
- F24** S. 89(2)(c) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 111(3)(b)**; S.I. 2015/481, **reg. 2(a)**
- F25** Words in s. 89(6) substituted (1.7.1992) by Road Traffic (Temporary Restrictions) Act 1991 (c. 26, SIF 107:1), **s. 2(6)(7)**; S.I. 1992/1218, **art. 2**
- F26** S. 89(6A)-(6D) inserted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 57(2), 145(2)**; S.S.I. 2004/420, **art. 3, Sch. 1**
- F27** Words in s. 89(13) substituted (1.7.1999) by S.I. 1999/1820, **art. 4, Sch. 2 Pt. I para. 102(4)(a)**
- F28** S. 89(13A)-(13C) inserted (1.7.1999) by S.I. 1999/1820, **art. 4, Sch. 2 Pt. I para. 102(4)(b)**

#### Modifications etc. (not altering text)

- C8** S. 89(1)(a) modified by S.I. 1991/719, **reg. 3(1)**
- C9** S. 89(1)(c) modified by S.I. 1991/719, **reg. 3(2)**
- C10** S. 89(1)(f) modified by S.I. 1991/719, **reg. 3(3)**
- C11** S. 89(2) modified by S.I. 1991/719, **reg. 3(4)**

#### Commencement Information

- I4** S. 89 wholly in force at 1.6.1991; s. 89 not in force at Royal Assent see s. 164(2); s. 89(7)(8)(9)(11)(12)(13) in force at 13.11.1990 by S.I. 1990/2243; s. 89(4) in force at 14.1.1991 by S.I. 1991/96, **art. 2**  
S. 89(1)(a)-(f)(2)(3)(5)(6)(10)(14) in force at 1.4.1991 and s. 89(1)(g) in force at 1.6.1991 see s. 164(3) and S.I. 1991/1042, **arts. 2, 3**

#### Marginal Citations

- M2** 1984 c. 27.
- M3** 1984 c. 27.

## 90 Litter control areas.

- [<sup>F29</sup>(1) The Secretary of State may, by order, prescribe descriptions of land which may be designated under subsection (3) below as, or as part of, a litter control area.
- (2) The power of the Secretary of State to prescribe descriptions of land under subsection (1) above includes power to describe land by reference to the ownership or occupation of the land or the activities carried on on it.
- (3) Any principal litter authority other than [<sup>F30</sup>an English] county council, [<sup>F31</sup>a][<sup>F32</sup>regional council] or [<sup>F31</sup>a]joint board may, in accordance with the following provisions of this section, by order designate any land in their area as, or as part of, a litter control area.
- (4) No order under subsection (3) above designating any land shall be made unless the authority is of the opinion that, by reason of the presence of litter or refuse, the condition of the land is, and unless they make a designation order is likely to continue to be, such as to be detrimental to the amenities of the locality.
- (5) The power to make a designation order under subsection (3) above shall be excluded from the functions to which section 101 of the <sup>M4</sup>Local Government Act 1972 (functions capable of delegation) applies.



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- (6) An authority proposing to make a designation order in relation to any land shall—
- (a) notify persons who appear to the authority to be persons who will be affected by the proposed order;
  - (b) give them an opportunity to make representations about it within the period of twenty-one days beginning with the service of the notice; and
  - (c) take any representations so made into account in making their decision.
- (7) A designation order under subsection (3) above shall identify the land to which it applies and shall be in such form as the Secretary of State may by order prescribe.]

#### Extent Information

**E3** See s. 164(4)(5)

#### Textual Amendments

- F29** S. 90 ceased to have effect (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) and repealed (E.W.) (6.3.2007 for E. and 15.3.2007 for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), ss. 20(1), 107, 108, [Sch. 5 Pt. 2](#); [S.I. 2006/768](#), [art. 3](#); [S.I. 2006/795](#), [art. 2\(3\)](#), Sch. 2; [S.I. 2006/2797](#), [art. 4\(g\)\(oo\)](#); [S.I. 2007/390](#), [art. 2\(c\)](#)
- F30** Words in s. 90(3) substituted (1.4.1996) by [1994 c. 19](#), s. 22(3), [Sch. 9 para. 17\(9\)](#) (with s. 54(7), Sch. 17 para. 22(1), 23(2)); [S.I. 1996/396](#), art. 3, [Sch.1](#).
- F31** Word in s. 90(3) inserted (1.4.1996) by [1994 c. 19](#), s. 22(3), [Sch. 9 para. 17\(9\)](#) (with s. 54(7), Sch. 17 para. 22(1), 23(2)); [S.I. 1996/396](#), art. 3, [Sch.1](#).
- F32** Words in s. 90(3) repealed (S.) (1.4.1996) by [1994 c. 39](#), s. 180(1)(2), Sch. 13 para. 167(12), [Sch.14](#); [S.I. 1996/323](#), art. 4(1)(c)(d), [Sch.2](#).

#### Commencement Information

- I5** S. 90 wholly in force at 1.6.1991; s. 90 not in force at Royal Assent see s. 164(2); s. 90(1)(2)(7) in force at 14.1.1991 by [S.I. 1991/96](#), [art. 2](#)  
S. 90(3)-(6) in force 1.6.1991 see s. 164(3) and [S.I. 1991/1042](#), [art. 3](#)

#### Marginal Citations

**M4** [1972 c. 70](#).

## 91 Summary proceedings by persons aggrieved by litter.

- (1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter or refuse, of—
- (a) any relevant highway;
  - (b) any trunk road which is a special road;
  - (c) any relevant land of a principal litter authority;
  - (d) any relevant Crown land;
  - (e) any relevant land of a designated statutory undertaker; [<sup>F33</sup>or]
  - (f) any relevant land of a designated educational institution; [<sup>F34</sup>or]
  - (g) any relevant land within a litter control area of a local authority.]
- (2) A magistrates' court may also act under this section on a complaint made by any person on the ground that he is aggrieved by the want of cleanliness of any relevant highway or any trunk road which is a special road.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Environmental Protection Act 1990, Part IV is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A principal litter authority shall not be treated as a person aggrieved for the purposes of proceedings under this section.
- (4) Proceedings under this section shall be brought against the person who has the duty to keep the land clear under section 89(1) above or to keep the highway clean under section 89(2) above, as the case may be.
- (5) Before instituting proceedings under this section against any person, the complainant shall give to the person not less than five days written notice of his intention to make the complaint and the notice shall specify the matter complained of.
- (6) If the magistrates' court is satisfied that the highway or land in question is defaced by litter or refuse or, in the case of a highway, is wanting in cleanliness, the court may, subject to subsections (7) and (8) below, make an order ("a litter abatement order") requiring the defendant to clear the litter or refuse away or, as the case may be, clean the highway within a time specified in the order.
- (7) The magistrates' court shall not make a litter abatement order if the defendant proves that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.
- (8) The magistrates' court shall not make a litter abatement order where it appears that the matter complained of is the result of directions given to the local authority under section 89(6) above by the highway authority.
- (9) A person who, without reasonable excuse, fails to comply with a litter abatement order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.
- (10) In any proceedings for an offence under subsection (9) above it shall be a defence for the defendant to prove that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.
- (11) A
  - [<sup>F35</sup>(a) direction under section 89(6A); or]
  - [<sup>F36</sup>(b)] code of practice under section 89(7)
 shall be admissible in evidence in any proceedings under this section and if any provision of such a [<sup>F37</sup>direction or] code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.
- (12) Where a magistrates' court is satisfied on the hearing of a complaint under this section—
  - (a) that, when the complaint was made to it, the highway or land in question was defaced by litter or refuse or, as the case may be, was wanting in cleanliness, and
  - (b) that there were reasonable grounds for bringing the complaint,
 the court shall order the defendant to pay such reasonable sum to the complainant as the court may determine in respect of the expenses incurred by the complainant in bringing the complaint and the proceedings before the court.
- (13) In the application of this section to Scotland—
  - (a) for any reference to a magistrates' court there shall be substituted a reference to the sheriff;

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- (b) for any reference to a complaint there shall be substituted a reference to a summary application, and “complainant” shall be construed accordingly;
- (c) for any reference to the defendant there shall be substituted a reference to the person against whom the proceedings are taken;
- (d) for any reference to a highway and a relevant highway there shall be substituted a reference to a road and a relevant road; and
- (e) for any reference to a highway authority there shall be substituted a reference to a roads authority,

and any person against whom proceedings are brought may appeal on a point of law to the Court of Session against the making of a litter abatement order.

#### Textual Amendments

- F33** Word in s. 91(1)(e) inserted (E.W.) (6.3.2007 for E. and 18.1.2008 for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), ss. 106, 108, [Sch. 4 para. 6](#); S.I. 2007/390, [art. 2\(a\)](#); S.I. 2007/3371, [art. 2\(a\)](#)
- F34** S. 91(1)(g) and preceding word repealed (E.W.) (6.3.2007 for E. and 15.3.2007 for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), ss. 107, 108, [Sch. 5 Pt. 2](#); S.I. 2006/2797, [art. 4\(oo\)](#); S.I. 2007/390, [art. 2\(c\)](#)
- F35** S. 91(11)(a) inserted (S.) (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. [57\(3\)\(a\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 1
- F36** Words in s. 91(11) renumbered (S.) (28.10.2004) as s. 91(11)(b) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. [57\(3\)\(b\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 1
- F37** Words in s. 91(11) inserted (S.) (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. [57\(3\)\(c\)](#), 145(2); S.S.I. 2004/420, [art. 3](#), Sch. 1

#### Commencement Information

- I6** S. 91 in force: s. 91 not in force at Royal Assent see s. 164(2); s. 91(1)(a)-(f)(2)-(13) in force 1.4.1991, s. 91(1)(g) in force 1.6.1991 see s. 164(3) and [S.I. 1991/1042](#), [arts. 2, 3](#)

### [<sup>F38</sup>92] Summary proceedings by litter authorities

- (1) Where a principal litter authority in Scotland other than a joint board is satisfied as respects—
  - (a) any relevant Crown land,
  - (b) any relevant land of a designated statutory undertaker,
  - (c) any relevant land of a designated educational institution, or
  - (d) any relevant land within a litter control area of a local authority,that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a “litter abatement notice”) imposing either the requirement or the prohibition or both the requirement and the prohibition specified in subsection (2).
- (2) The requirement and prohibition referred to in subsection (1) are as follows, namely—
  - (a) a requirement that the litter or refuse be cleared within a time specified in the notice;
  - (b) a prohibition on permitting the land to become defaced by litter or refuse.
- (3) The litter abatement notice shall be served—
  - (a) as respects relevant Crown land, on the appropriate Crown authority;

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- (b) as respects relevant land of a designated statutory undertaker, on the undertaker;
  - (c) as respects relevant land of a designated educational institution, on the governing body of the institution or on the education authority responsible for the management of the institution;
  - (d) in any other case, on the occupier of the land or, if it is unoccupied, on the owner of the land.
- (4) The person served with the notice may appeal against the notice to the sheriff by way of application within the period of 21 days beginning with the date on which the notice was served.
- (5) If, on any appeal under subsection (4), the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1), the court shall allow the appeal.
- (6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.
- (7) In any proceedings for an offence under subsection (6), it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1).
- (8) A direction under section 89(6A) or a code of practice under section 89(7) shall be admissible in evidence in any proceedings under this section and, if any provision of such a direction or code appears to the court to be relevant to any question in the proceedings, it shall be taken into account in determining that question.
- (9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10)—
- (a) enter on the land and clear the litter or refuse, and
  - (b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.
- (10) Subsection (9) does not apply in relation to relevant Crown land or relevant land of statutory undertakers.]

#### Textual Amendments

**F38** Ss. 92-94A repealed (20.10.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 21](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, [art. 3\(g\)\(ii\)](#); and ss. 92, 93, 94 re-inserted (with modifications) (S.) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 179\(1\)](#), 183(5)(c)

#### <sup>F38</sup>92A Litter clearing notices

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*Status: Point in time view as at 31/01/2017.*

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**Textual Amendments**

**F38** Ss. 92-94A repealed (20.10.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 21](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, [art. 3\(g\)\(ii\)](#); and ss. 92, 93, 94 re-inserted (with modifications) (S.) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 179\(1\), 183\(5\)\(c\)](#)

**<sup>F38</sup>92B Appeals against litter clearing notices**

.....

**Textual Amendments**

**F38** Ss. 92-94A repealed (20.10.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 21](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, [art. 3\(g\)\(ii\)](#); and ss. 92, 93, 94 re-inserted (with modifications) (S.) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 179\(1\), 183\(5\)\(c\)](#)

**<sup>F38</sup>92C Failure to comply with litter clearing notice**

.....

**Textual Amendments**

**F38** Ss. 92-94A repealed (20.10.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 21](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, [art. 3\(g\)\(ii\)](#); and ss. 92, 93, 94 re-inserted (with modifications) (S.) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 179\(1\), 183\(5\)\(c\)](#)

**[<sup>F39</sup>93 Street litter control notices.**

- (1) A principal litter authority in Scotland other than a joint board may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices (“street litter control notices”) imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94.
- (2) If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94(1)(a) and have a frontage on a street in their area, that—
  - (a) there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises,
  - (b) the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse, or
  - (c) there is produced, as a result of the activities carried on on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises,

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the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.

- (3) A notice shall, subject to section 94(2), (3) and (4)—
- (a) identify the premises and state the grounds under subsection (2) on which it is issued;
  - (b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;
  - (c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances;

and, for the purposes of paragraph (b), an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

- (4) In this section and section 94—

“notice” means a street litter control notice;

“open land” means land in the open air;

“the premises”, in relation to a notice, means the premises in respect of which the notice is issued;

“specified area” means the area specified in a notice under subsection (3) (b); and

“street” means a relevant highway, a relevant road or any other highway or road over which there is a right of way on foot.]

#### Textual Amendments

**F39** Ss. 92-94A repealed (20.10.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 21](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); [S.I. 2014/2590](#), [art. 3\(g\)\(ii\)](#); and ss. 92, 93, 94 re-inserted (with modifications) (S.) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 179\(1\), 183\(5\)\(c\)](#)

#### [<sup>F38</sup>94 Street litter: supplementary provisions

- (1) The Scottish Ministers may by order prescribe—
- (a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;
  - (b) the descriptions of land which may be included in a specified area; and
  - (c) the maximum area of land which may be included in a specified area;
- and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) for different cases or circumstances.

An order under this subsection is subject to the negative procedure.

- (2) The power to describe premises or land under subsection (1)(a) or (b) includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.
- (3) The land comprised in a specified area—
- (a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b);
  - (b) shall not include any land which is not—

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- (i) part of the premises,
    - (ii) part of a street,
    - (iii) relevant land of a principal litter authority, or
    - (iv) land under the direct control of any other local authority; and
  - (c) shall not exceed any applicable maximum area prescribed under subsection (1)(c);
- but a specified area shall not include any part of the premises which is or is part of a litter control area.
- (4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require—
- (a) the provision or emptying of receptacles for litter or refuse;
  - (b) the doing within a period specified in the notice of any such thing as may be so specified (including the standards to which any such thing must be done); or
  - (c) the doing (while the notice remains in force) at such times or intervals, or within such period, of any such thing as may be so specified;
- but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.
- (5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.
- (6) An authority proposing to serve a notice shall—
- (a) inform the person on whom the notice is to be served;
  - (b) give him the opportunity to make representations about the notice within the period of 21 days beginning with the day on which he is so informed; and
  - (c) take any representations so made into account in making their decision.
- (7) A person on whom a notice is served may appeal against the notice to the sheriff by way of application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.
- (8) If it appears to the authority that a person has failed or is failing to comply with any requirement imposed by a notice, the authority may apply to the sheriff by way of application for an order requiring the person to comply with the requirement within such time as may be specified in the order.
- (9) A person who, without reasonable excuse, fails to comply with an order under subsection (8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

#### Textual Amendments

**F38** Ss. 92-94A repealed (20.10.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 21](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, [art. 3\(g\)\(ii\)](#); and ss. 92, 93, 94 re-inserted (with modifications) (S.) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 179\(1\)](#), [183\(5\)\(c\)](#)

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### <sup>F38</sup>94A Fixed penalty notices relating to sections 92C and 94

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#### Textual Amendments

**F38** Ss. 92-94A repealed (20.10.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 21](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, [art. 3\(g\)\(ii\)](#); and ss. 92, 93, 94 re-inserted (with modifications) (S.) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 179\(1\)](#), 183(5)(c)

### <sup>F40</sup>94B Free distribution of printed matter

Schedule 3A (distribution of printed matter on designated land) has effect.]

#### Textual Amendments

**F40** S. 94B inserted (E.W.) (6.4.2006 for E. and 15.3.2007 in force for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), [ss. 23\(1\)](#), 108; S.I. 2006/795, [art. 2\(3\)](#), [Sch. 2](#); S.I. 2006/2797, [art. 4\(j\)](#)

## 95 Public registers.

- (1) It shall be the duty of each principal litter authority other than <sup>F41</sup>an English]county council, <sup>F42</sup>a] <sup>F43</sup>regional council or] <sup>F42</sup>a] joint board to maintain, in accordance with this section, a register containing copies of—
  - (a) <sup>F44</sup>all orders made by the authority under section 90(3) above; and]
  - (b) all street litter control notices issued under section 93(1) above.<sup>F45</sup> and
  - (c) all orders made by the authority under paragraph 2(1) of Schedule 3A.]
- (2) Where the requirements of a street litter control notice are varied or added to on an appeal under section 94(7) above a copy of the order making the variation or addition shall be included in the register.
- (3) Copies of the orders and notices required to be kept in the register shall be so kept for so long as the order or notice is in force.
- (4) It shall be the duty of each authority maintaining a register under this section—
  - (a) to secure that the register is available, at all reasonable times, for inspection by the public free of charge; and
  - (b) to afford to members of the public facilities for obtaining copies of the documents kept in the register, on payment of reasonable charges.
- (5) A register under this section need not be kept in documentary form.

#### Textual Amendments

**F41** Words in s. 95(1) substituted (1.4.1996) by [1994 c. 19](#), s. 22(3), [Sch. 9 para. 17\(9\)](#) (with s. 54(7), [Sch. 17 para. 22\(1\)](#), 23(2)); S.I. 1996/396, art. 3, [Sch.1](#).

**F42** Word in s. 95(1) inserted (1.4.1996) by [1994 c. 19](#), s. 22(3), [Sch. 9 para. 17\(9\)](#) (with s. 54(7), [Sch. 17 para. 22\(1\)](#), 23(2)); S.I. 1996/396, art. 3, [Sch.1](#).



*Status: Point in time view as at 31/01/2017.*

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- F43** Words in s. 95(1) repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 167(15), **Sch.14**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.
- F44** S. 95(1)(a) repealed (E.W.) (6.3.2007 for E. and 15.3.2007 for W.) by **Clean Neighbourhoods and Environment Act 2005 (c. 16)**, ss. 107, 108, **Sch. 5 Pt. 2**; S.I. 2006/2797, **art. 4(oo)**; S.I. 2007/390, **art. 2(c)**
- F45** S. 95(1)(c) and preceding word inserted (E.W.) (6.3.2007 for E. and 18.1.2008 for W.) by **Clean Neighbourhoods and Environment Act 2005 (c. 16)**, ss. 106, 108, **Sch. 4 para. 8**; S.I. 2007/390 {art. 2(a)}; S.I. 2007/3371, **art. 2(a)**

#### Commencement Information

- I7** S. 95 wholly in force at 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

## 96 Application of Part II.

- (1) This section applies to litter and refuse collected—
- (a) by any authority or person in pursuance of section 89(1) above;
  - (b) by a principal litter authority in pursuance of section 92(9) [<sup>F46</sup>or 92C(3)] above; or
  - (c) by any person in pursuance of section 93 above.
- (2) The Secretary of State may make regulations providing that prescribed provisions of Part II shall have effect, with such modifications (if any) as may be prescribed—
- (a) as if references to controlled waste or controlled waste of a prescribed description included references to litter and refuse to which this section applies or any description of such litter and refuse;
  - (b) as if references to controlled waste or controlled waste of a prescribed description collected under section 45 above included references to litter and refuse collected as mentioned in subsection (1) above or any description of such litter and refuse.
- (3) The powers conferred by this section are exercisable in relation to litter and refuse to which it applies whether or not the circumstances are such that the litter or refuse would be treated as controlled waste apart from this section and this section is not to affect the interpretation of the expressions defined in section 75 above.

#### Textual Amendments

- F46** Words in s. 96(1)(b) inserted (E.W.) (6.3.2007 for E. and 18.1.2008 for W.) by **Clean Neighbourhoods and Environment Act 2005 (c. 16)**, ss. 106, 108, **Sch. 4 para. 9**; S.I. 2007/390, **art. 2(a)**; S.I. 2007/3371, **art. 2(a)**

#### Modifications etc. (not altering text)

- C12** S. 96 applied (19.9.2007) by **London Local Authorities Act 2007 (c. ii)**, ss. 1(3)-(5), **22(7)** (with s. 22(10))
- C13** S. 96 applied (19.9.2007) by **London Local Authorities Act 2007 (c. ii)**, ss. 1(3)-(5), **20(7)** (with s. 20(10))

#### Commencement Information

- I8** S. 96 wholly in force; s. 96 not in force at Royal Assent see s. 164(2); s. 96(2)(3) in force at 14.1.1991 by S.I. 1991/96, **art. 2**; s. 96(1) in force at 1.4.1991 by S.I. 1991/1042, **art. 2**

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: Environmental Protection Act 1990, Part IV is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 97 Transitional provision relating to section 89.

- (1) The Secretary of State may, for the purposes of the transition to the duties imposed by section 89 above on local authorities and educational bodies, by regulations, make provision—
  - (a) modifying that section, or
  - (b) modifying Part I of the Local Government Act 1988 (competition rules for functional work or works contracts).
- (2) Regulations under this section may make different provision for different descriptions of authorities, different areas or other different circumstances or cases.
- (3) In this section—
 

“educational bodies” means the governing bodies and education authorities mentioned in section 89(1)(f) above; and

“local authorities” means the local authorities mentioned in section 89(1)(a) and (c) and (2)(a) above.

### [<sup>F47</sup>97A Fixed penalty notices: supplementary

- (1) The appropriate person may by regulations make provision in connection with the powers conferred under—
  - (a) section 88(6A)(a) and (7) above;
  - (b) section 94A(4)(a) and (5) above;
  - (c) paragraph 7(4)(a) and (5) of Schedule 3A.
- (2) Regulations under subsection (1) may (in particular)—
  - (a) require an amount specified under section 88(6A)(a), 94A(4)(a) or paragraph 7(4)(a) of Schedule 3A to fall within a range prescribed in the regulations;
  - (b) restrict the extent to which, and the circumstances in which, an authority can make provision under section 88(7), 94A(5) or paragraph 7(5) of Schedule 3A.
- (3) The appropriate person may by order substitute a different amount for the amount for the time being specified in section 88(6A)(b), 94A(4)(b) or paragraph 7(4)(b) of Schedule 3A.
- (4) Regulations or an order under this section may make different provision for different purposes.]

#### Textual Amendments

**F47** S. 97A inserted (E.W.) (16.3.2006 for certain purposes for W., 6.4.2006 for E. and 15.3.2007 in so far as not already in force for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 24, 108**; [S.I. 2006/768](#), **art. 3**; [S.I. 2006/795](#), **art. 2(3)**, Sch. 2; [S.I. 2006/2797](#), **art. 4(k)**

### [<sup>F48</sup>97B Exclusion of liability

- (1) None of the persons mentioned in subsection (2) below is to have any liability to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of the power in section 92(9), 92A(9) or 92C(3) above.

*Status: Point in time view as at 31/01/2017.*

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- (2) Those persons are—
  - (a) the principal litter authority and any employee of the authority; and
  - (b) in the case of the power in section 92C(3) above, any person authorised by the authority under that provision and the employer or any employee of that person.
- (3) Subsection (1) above does not apply—
  - (a) if the act or omission is shown to be in bad faith;
  - (b) to liability arising out of a failure to exercise due care and attention;
  - (c) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (4) This section does not affect any other exemption from liability (whether at common law or otherwise).]

#### Textual Amendments

**F48** S. 97B inserted (E.W.) (6.4.2006 for E. and 15.3.2007 for W.) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 25, 108**; S.I. 2006/795, **art. 2(3)**, Sch. 2; S.I. 2006/2797, **art. 4(1)**

## 98 Definitions.

(1) The following definitions apply for the interpretation of this Part.

- [<sup>F49</sup>(1A) “Appropriate person” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the National Assembly for Wales.]
- (2) “Educational institution”, in relation to England and Wales, means—
  - <sup>F50</sup>(a) .....
  - (b) the Open University;
  - (c) any institution which provides higher education or further education (or both) which is full-time education being an institution which—
    - (i) is maintained by grants made by the Secretary of State under [<sup>F51</sup>section 485 of the Education Act 1996];
    - (ii) <sup>F52</sup>.....
    - (iii) is maintained by a [<sup>F53</sup>local authority as defined in section 579(1) of the Education Act 1996];
  - <sup>F54</sup>[(d) any institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992]
  - (e) any city technology college [<sup>F55</sup>, city college for the technology of the arts or [<sup>F56</sup>Academy]];
  - [<sup>F57</sup>(f) any community, foundation or voluntary school;
  - <sup>F57</sup>(g) any community or foundation special school.]
- (3) “Educational institution”, in relation to Scotland, means—
  - (a) any university within the meaning of the Education Reform Act 1988 funded by the Universities Funding Council under section 131 of that Act;
  - (b) the Open University;

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- [<sup>F58</sup>(c) any educational establishment (not being a school) within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible;
- (cc) any college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 managed by a board of management established under Part I of that Act;]
- [<sup>F59</sup>(d) a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;]
- <sup>F60</sup>[(da) any institution within the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992]
- (e) a technology academy within the meaning of section 68(1) of the 1989 Act;
- (f) a public school as defined in section 135(1) of the [<sup>F61</sup>Education (Scotland) Act 1980 (“the 1980 Act”)];
- (g) a grant-aided school as defined in section 135(1) of the 1980 Act;
- <sup>F62</sup>[(h) a self-governing school within the meaning of section 1(3) of the 1989 Act.]
- (4) “Joint board”, in relation to Scotland, has the meaning given by section 235(1) of the <sup>M5</sup>Local Government (Scotland) Act 1973.
- (5) “Highway” (and “highway maintainable at the public expense”), [<sup>F63</sup>“highway authority”] “special road” and “trunk road”, in relation to England and Wales, have the same meaning as in the <sup>M6</sup>Highways Act 1980 and “public road”, “special road” and “trunk road”, in relation to Scotland, have the same meaning as in the <sup>M7</sup>Roads (Scotland) Act 1984.
- [<sup>F64</sup>(5A) “Litter” includes—
- (a) the discarded ends of cigarettes, cigars and like products, and
- (b) discarded chewing-gum and the discarded remains of other products designed for chewing.]
- [<sup>F65</sup>(5B) Strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015.]
- (6) “Statutory undertaker” means—
- (a) any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking;
- (b) any person authorised by any enactment to carry on any canal, inland navigation, dock, harbour or pier undertaking; or
- (c) any relevant airport operator (within the meaning of Part V of the <sup>M8</sup>Airports Act 1986).
- [<sup>F66</sup>(6A) In subsection (6) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

#### Textual Amendments

**F49** S. 98(1A) inserted (E.W.) (7.4.2005) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), s. 26

**F50** S. 98(2)(a) repealed (1.4.1993) by [Further and Higher Education Act 1992 \(c. 13\)](#), s. 93, Sch. 8 Pt. II para. 95(a), [Sch. 9](#); S.I. 1992/831, art. 2, [Sch. 3](#).

*Status: Point in time view as at 31/01/2017.*

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- F51** Words in s. 98(2)(c)(i) substituted (1.11.1996) by 1996 c. 56, s. 582(1), 583(2), **Sch. 37 Pt. I para. 100(a)** (with ss. 1(4), **Sch. 39**).
- F52** Words in s. 98(2)(c)(ii) repealed (6.11.2006 for E. and 2.1.2008 for W.) by Education Act 2002 (c. 32), ss. 215(1)(2), 216, **Sch. 21 para. 10, Sch. 22 Pt. 3** (with ss. 210(8), 214(4)); S.I. 2006/2895, **art. 2**; S.I. 2007/3611, **art. 4(1)**, **Sch. Pt. 1** (with **Sch. Pt. 3 para. 1**)
- F53** Words in s. 98(2)(c)(iii) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158), arts. 1, 5(1), **Sch. 2 para. 39**
- F54** S. 98(2)(d) substituted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. II para. 95(b)**; S.I. 1992/831, **art. 2, Sch. 3**.
- F55** Words in s. 98(2)(e) substituted (28.7.2000 for specified purposes and otherwise *prosp.*) by 2000 c. 21, ss. 149, 154, **Sch. 9 para. 19** (with s. 150)
- F56** Words in s. 98(2)(e) substituted (26.7.2002) by Education Act 2002 (c. 32), s. 65(3), **Sch. 7 Pt. 2 para. 2** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2** (as amended by S.I. 2002/2018)
- F57** S. 98(2)(f)(g) substituted (1.9.1999) by 1998 c. 31, s. 140(1), **Sch. 30 para. 23** (with ss. 138(9), 144(6)); S.I. 1999/2323, **art. 2(1), Sch. 1**
- F58** S. 98(3)(c)(cc) substituted (1.4.1993) by Further and Higher Education (Scotland) Act 1992 (c. 37) s. 62(2), **Sch. 9 para. 13(a)**; S.I. 1992/817, **art. 3(2), Sch. 4**.
- F59** S. 98(3)(d) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9, para. 13(b)**; S.I. 1992/817, **art. 3(2), Sch. 1**
- F60** S. 98(2)(da) inserted (1.4.1993) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. II para. 95(c)**; S.I. 1992/831, **art. 2, Sch. 3**.
- F61** Words in s. 98(3)(f) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37) s. 62(2), **Sch. 9 para. 13(c)**; S.I. 1992/817, **art. 3(2), Sch. 1**
- F62** S. 98(3)(h) repealed (S.) (31.12.2004) by 2000 asp 6, ss. 60(2), 61(2), **Sch. 3**; S.S.I. 2004/528, **art. 2**
- F63** Words in s. 98(5) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 112(2)**; S.I. 2015/481, **reg. 2(a)**
- F64** S. 98(5A) inserted (E.W.) (7.6.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), ss. 27, 108(4)(c)
- F65** S. 98(5B) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 112(3)**; S.I. 2015/481, **reg. 2(a)**
- F66** S. 98(6A) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 40(8)**; S.S.I. 2014/160, **art. 2(1)(2), sch.**

#### Modifications etc. (not altering text)

- C14** S. 98(2) applied (E.W.)(1.4.1994) by S.I. 1994/653, **reg. 42(1), Sch. Pt. I**.

#### Commencement Information

- I9** S. 98 partly in force; s. 98 not in force at Royal Assent see s. 164(2); s. 98(1) (2) (5) (6) in force (E.W) 13.2.1991 by S.I. 1991/96, **art. 3**  
S. 98(3)(4) in force 1.4.1991; s. 98(1)(5)(6) in force (S.) 1.4.1991 see s. 164(3) and S.I. 1991/1042, **art. 2**

#### Marginal Citations

- M5** 1973 c. 65.  
**M6** 1980 c. 66.  
**M7** 1984 c. 54.  
**M8** 1986 c. 31.

*Status: Point in time view as at 31/01/2017.*

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### *Abandoned trolleys*

#### **99 Powers in relation to abandoned shopping and luggage trolleys.**

- (1) A local authority may, subject to subsection (3) below, resolve that Schedule 4 to this Act is to apply in its area; and if a local authority does so resolve, that Schedule shall come into force in its area on the day specified in the resolution, which must not be before the expiration of the period of three months beginning with the day on which the resolution is passed.
- (2) A local authority shall publish in at least one newspaper circulating in its area a notice that the authority has passed a resolution under this section and indicating the general effect of that Schedule.
- (3) It shall be the duty of a local authority, before making any resolution for the application of Schedule 4 to this Act in its area, to consult with the persons or representatives of persons who appear to the authority to be persons who will be affected by the application of that Schedule.
- (4) It shall be the duty of a local authority from time to time to consult about the operation of Schedule 4 to this Act with the persons or representatives of persons who appear to be affected by its operation.
- (5) In this section “local authority” means—
  - (a) the council of a district;
  - (b) the council of a London borough;
  - (c) the Common Council of the City of London;
  - (d) the council of the Isles of Scilly;
  - [<sup>F67</sup>(dd) in Wales, the council of a county or county borough;]and
  - (e) in Scotland, [<sup>F68</sup>a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994].
- (6) In Schedule 4 to this Act “the local authority” means any local authority which has resolved that that Schedule is to apply in its area.

#### **Textual Amendments**

**F67** S. 99(5)(dd) inserted (1.4.1996) by 1994 c. 19, s. 22(3), **Sch. 9 para. 17(11)** (with s. 54(7), **Sch. 17 para. 22(1), 23(2)**); S.I. 1996/396, art. 3, **Sch.1**.

**F68** Words in s. 99(5)(e) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 167(16)**; S.I. 1996/323, art. 4(1)(c)(d), **Sch.2**.

**Status:**

Point in time view as at 31/01/2017.

**Changes to legislation:**

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