

ANTI-SOCIAL BEHAVIOUR ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: the Environment

Noise

Sections 40: Closure of noisy premises

101. *Section 40* allows a chief executive of a local authority to issue a closure order in relation to licensed premises or premises operating under a temporary event notice which are causing a public noise nuisance. *Subsection (1)* sets out the circumstances under which a closure order can be made. *Subsection (3)* states that the closure order can apply for a maximum of 24 hours, starting from the time when the notice was issued to the manager. *Subsections (4)* and *(5)* provide that if a person disobeys a closure order they are committing an offence and can receive a penalty of up to 3 months imprisonment or a fine of up to £20,000.

Sections 41: Closure of noisy premises: supplemental

102. *Subsection (1)* of section 41 outlines the circumstances under which an order can be cancelled, and requires the officer issuing the order to inform the relevant licensing authority. *Subsection (2)* sets out the process by which the chief executive officer of a local authority can authorise environmental health officers to issue closure orders. *Subsection (3)* defines terms used in this section and in section 40.

Section 42: Dealing with noise at night

103. This section amends the Noise Act 1996, which currently gives powers to deal with noise at night (by way of warning notices, fixed penalties etc.). These powers have previously only applied to a local authority (in England, Wales or Northern Ireland) that adopts to apply them in its area. *Subsection (2)* removes the adoptive nature of the powers in respect of England and Wales, thereby bestowing these powers on all English and Welsh local authorities. *Subsection (3)* removes the previously associated duty (once the powers had been adopted) to take reasonable steps to investigate a complaint, and substitutes a discretionary power to take such steps in response to a complaint. *Subsection (4)* removes a provision that applied to the situation where one authority had adopted powers under the Act but a neighbouring authority had not, as this will no longer apply. *Subsection (5)* makes provision as to what local authorities can do with penalty receipts.

Penalty Notices for graffiti and fly-posting

104. *Sections 43 – 47* give authorised local authority officials the ability to issue fixed penalty notices to offenders who have perpetrated acts of graffiti or fly posting. The intention is to levy the penalties only on the persons actually committing these acts,

and not in the case of fly-posting on the person (unless he is one and the same) whose goods or services are advertised on the poster.

Section 43: Penalty notices for graffiti or fly-posting

105. *Subsection (1)* sets out the power for the local authority official to issue a penalty for the relevant offence (defined at section 44). *Subsection(2)* excludes from the scope of such offences capable of being dealt with by means of a fixed penalty notice any that is racially or religiously targeted or motivated. *Subsection (3)* restricts the possibility of being issued with a fixed penalty notice in lieu of prosecution for an offence under s.224(3) Town and Country Planning Act 1990 to the person personally affixing or placing the unlawful advertisement in question. *Subsection (4)(a)* provides that offenders have 14 days in which to pay the penalty, after which prosecution for the offence may be initiated. *Subsection (4)(b)* sets out that no proceedings may be brought where payment of the fixed penalty has been made within the 14 day period. *Subsection (5)* provides that in issuing a fixed penalty a local authority officer must provide a written statement setting out the particulars of the offence. *Subsection (6)(a), (b) and (c)* sets out that the notice setting out the particulars of the offence must state that legal proceedings will not be initiated until after 14 days, the amount of the fixed penalty and details of where and to whom the penalty should be paid.
106. *Subsection (7)* provides that payment of a penalty may be made by pre-paying and posting a letter containing the full amount of the penalty (in cash or otherwise) to the person named on the notice. *Subsection (8)* provides that where a letter is sent containing payment of the penalty, that payment is deemed as having been made at the time the letter would ordinarily be expected to be delivered. *Subsection (9)* provides that the penalty notice shall be in such form as the “appropriate person” (i.e. the Secretary of State, in England, or the National Assembly for Wales, in Wales) shall prescribe. *Subsection (10)* provides that the penalty for these offences is £50. *Subsection (11)* provides that the appropriate person may subsequently change the amount of the fixed penalty by means of an order (i.e. a statutory instrument).

Section 44: Relevant offences

107. This section describes the offences in respect of which fixed penalty notices may be issued, being the graffiti-type and fly-posting-type offences otherwise prosecutable under the enactments listed at *subsection (1)(a)-(f)*. It is understood that graffiti-type offences are almost always prosecuted under the Criminal Damage Act 1971, although the enactments listed at *subsection (1)(a),(b),(d) and (e)* contain provisions which might also equate to the same offence.

Section 45: Penalty receipts

108. *Subsection (1)* provides that penalties issued under section 43 are payable to the local authority. *Subsection (2)* sets out that a local authority officer may make a statement/certificate stating the facts about payments which may be used in evidence in any proceedings. *Subsection (3)* provides that any sums received by a local authority from fixed penalties may be used by it only for the purposes of its “qualifying functions” (being its functions under section 43 and any subsequently so specified in Regulations made by the appropriate person). *Subsection (4) and (5)* relate to the qualifying functions. *Subsection (6)* sets out that the local authority must provide the appropriate person with information relating to the use of the penalty receipts. *Subsection (7)* provides that the appropriate person may, by Regulations, make provision for what local authorities must do with receipts if they are not being spent, and make provision for appropriate accounting arrangements. *Subsection (8)* says that such Regulations may provide that where a local authority has not spent these receipts they may be required to surrender them to another person (including the appropriate person). *Subsection (9)* sets out that the appropriate person must consult with local authorities and others he considers appropriate before making any Regulations under this section.

Section 46: Powers of police civilians

109. *Subsection (1)* amends Schedule 4 to the Police Reform Act 2002 to include powers for a community support officer to issue penalty notices in respect of graffiti and fly posting (as they currently have for issuing penalties in respect of littering and dog fouling). *Subsection (2)* amends Schedule 5 to the Police Reform Act 2002 in respect of powers of accredited persons to issue fixed penalty notices to include being able to do so in respect of graffiti and fly-posting.

Section 47: Interpretation

110. *Subsection (1)* defines “advertisement”, “land” “appropriate person”, “authorised officer”, “local authority”, “racial group” and “religious group”. *Subsection (2)* applies a provision of the Crime and Disorder Act 1998. *Subsection (3)* permits the appropriate person to issue guidance to local authorities in respect of the exercise of their officers’ discretion to issue fixed penalty notices under section 43 and about the giving of such notices. The intention is to specify that such notices are appropriate only in the case of “minor” instances of graffiti or fly-posting; where major criminal damage has been done, criminal prosecution will continue to be the appropriate course.

Removal of graffiti

Section 48: Graffiti removal notices

111. *Subsections (1)* and *(2)* enable a local authority to serve a “graffiti removal notice” on the owners of street furniture, statutory undertakers and educational institutions whose property is defaced with graffiti that is either detrimental to the amenity of the area or offensive. *Subsection (3)* sets out that the notice will require them to remove the graffiti within a specified period of time, a minimum of 28 days. *Subsections (4)* and *(5)* state that if the person responsible for the property fails to remove the graffiti, the local authority can intervene and clean up the graffiti. *Subsection (6)* requires that the notice should detail the consequences of non-compliance and *subsection (7)* sets out the process for serving a notice. *Subsection (8)* allows that the local authority may affix a notice to the offending surface if they are unable to locate the person responsible. *Subsections (9)* and *(10)* define the surfaces covered, *subsection (11)* sets out whom the notice should be served upon and *subsection (12)* provides the definition of remaining terms.

Section 49: Recovery of expenditure

112. *Section 49* sets out the process for local authorities to recover costs from the persons responsible for the property they clean under section 48(4). *Subsection (1)* allows the local authority to recover costs if the expenditure claimed is reasonable. *Subsection (2)* requires that the local authority concerned must have previously served a notice on the persons concerned, detailing the expenditure to be recovered. *Subsection (3)* sets out the process for serving a notice.

Section 50: Guidance

113. *Section 50* requires the Secretary of State (or National Assembly for Wales) to issue guidance on the operation of these sections, with which local authorities must comply.

Section 51: Appeals

114. *Section 51* sets out grounds and processes for appeal. *Subsection (1)* allows appeal to be made to a magistrates’ court within 21 days of the serving of the notice. *Subsection (2)* allows appeal on the grounds that the graffiti does not merit removal or in connection with the notice. Under *subsection (3)* any notice is suspended pending the appeal. *Subsection (4)* requires the court either to quash or modify the notice, or to dismiss the appeal. *Subsection (5)* allows the court to extend the period specified in the notice

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when it does not allow the appeal. *Subsection (6)* allows appeal on the grounds that the amount charged is excessive. *Subsection (7)* requires the court either to confirm the amount the authority seeks to recover or to substitute a lower amount.

Section 52: Exemption from liability in relation to graffiti removal notices

115. *Section 52* sets out the terms of the exemption from liability for damages that protects those taking action to remove the graffiti under section 48(4).

Advertisements

Section 53: Display of advertisements in contravention of regulations

116. This section increases, from level 3 (£1,000) to level 4 (£2,500), the maximum level of penalty for an offence under s.224(3) of the Town and Country Planning Act 1990 (i.e. displaying an advertisement in contravention of Regulations made under s.220 of the Act - currently the [Town and Country Planning \(Control of Advertisements\) Regulations 1992 \(S.I. 1992/666\)](#)). The increase recognises the growing incidence of fly-posting and the need to have a more punitive deterrent for those responsible for the crime. The section has the effect of raising the maximum penalty for all advertisements displayed in contravention of the Regulations.

Aerosol Paints

Section 54: Sale of aerosol paint to children

117. This section makes it an offence to sell aerosol spray paints to persons aged under 16. The objective is to reduce the incidence of criminal damage caused by acts of graffiti. *Subsection (2)* contains a definition of aerosol spray paints. *Subsection (3)* sets out the maximum penalty for the offence which is a fine of £2,500. *Subsection (4)* provides a defence for those who took all reasonable steps to determine the purchaser's age and reasonably believed he was 16 or over. *Subsection (5)* provides a defence for someone who is charged with an offence but did not carry out the sale themselves (such as a shopkeeper) if they took all reasonable steps to avoid the commission of an offence.

Waste and litter

Section 55: Unlawfully deposited waste etc

118. This section gives waste collection authorities (as defined in section 30(3)(a), (b) and (bb) of the Environmental Protection Act 1990) in England and Wales a strategic role for dealing with the illegal deposit or other disposal of waste (or “fly-tipping”), facilitates the definition of this role further to the receipt of statutory directions and extends the range of powers available to them. This should lead to better enforcement of current legislation, a significant increase in investigation activity, better detection of the perpetrators of the crime and, eventually, a reduction in levels of unlawfully deposited waste.
119. *Subsections (1)* and *(2)* correct an error in the [Control of Pollution \(Amendment\) Act 1989 \(c. 14\)](#). *Subsections (1)* and *(3)* amend the [Control of Pollution \(Amendment\) Act 1989 \(c.14\)](#) to give waste collection authorities in England and Wales the powers to stop, search and (after the issue of a warrant) seize a vehicle they suspect of being used for the unlawful deposit of waste. *Subsection (4)*, by means of an amendment to the Environmental Protection Act 1990 (introducing to that Act a new section 59A), gives the Secretary of State the power to issue statutory directions to clarify the roles and responsibilities in the exercise of their powers under section 59 of that Act of the waste regulation authority (the Environment Agency) and waste collection authorities when dealing with illegally deposited waste.

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120. *Subsection (5)* amends section 71 of the Environmental Protection Act 1990 so as to provide that any of these authorities may be required to supply the Secretary of State with such information as he shall specify in relation to the categories and quantities of waste that they have dealt with whether under section 59 or under any other enactment in respect of any unlawful deposit or disposal of waste in contravention of section 33 of the 1990 Act. *Subsection (10)* provides that this power and the power under subsection (5) is exercisable by the National Assembly for Wales in Wales. *Subsections (6) to (9)* amend section 108 of the Environment Act 1995 to give waste collection authorities certain powers relating to the investigation of incidents of unlawfully deposited waste.

Section 56: Extension of litter authority powers to take remedial action

121. This section amends section 92(10) of the Environmental Protection Act 1990 to remove the barrier which currently prevents local authorities from entering relevant land (Crown land or land owned by a Statutory Undertaker), clearing that land of litter, and recovering its costs through the courts. Exceptions will still apply to land occupied for naval, military or air force purposes.