



# Anti-social Behaviour Act 2003

## 2003 CHAPTER 38

### PART 6

#### THE ENVIRONMENT

##### *Removal of graffiti*

#### **48 Graffiti removal notices**

- (1) This section applies where a local authority is satisfied—
  - (a) that a relevant surface in an area has been defaced by graffiti, and
  - (b) that the defacement is detrimental to the amenity of the area or is offensive.
- (2) The authority may serve a notice (a “graffiti removal notice”) upon any person who is responsible for the surface imposing the requirement mentioned in subsection (3).
- (3) That requirement is a requirement that the defacement be removed, cleared or otherwise remedied within a period specified in the notice being not less than 28 days beginning with the day on which the notice is served.
- (4) If the requirement mentioned in subsection (3) is not complied with, the authority or any person authorised by the authority may remove, clear or otherwise remedy the defacement.
- (5) In exercising the power under subsection (4) the authority or any person authorised by the authority may enter any land to the extent reasonably necessary for that purpose.
- (6) A graffiti removal notice must explain the effect of subsections (4) and (5) and sections 49 and 51.
- (7) Subject to subsection (8), section 160 of the Environmental Protection Act 1990 (c. 43) has effect in relation to graffiti removal notices as if they were notices within subsection (2) of that section.

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*Status: This is the original version (as it was originally enacted).*

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- (8) Where after reasonable enquiry a local authority is unable to ascertain the name or proper address of any person who is responsible for a relevant surface, the authority may—
- (a) affix a graffiti removal notice to the surface, and
  - (b) enter any land to the extent reasonably necessary for that purpose;
- and that notice shall be treated as having been served upon a person responsible for the surface.
- (9) In this section a “relevant surface” is any of the following surfaces, whether internal or external or open to the air or not—
- (a) the surface of any street or of any building, structure, apparatus, plant or other object in or on any street;
  - (b) the surface of any land owned, occupied or controlled by a statutory undertaker or of any building, structure, apparatus, plant or other object in or on any such land;
  - (c) the surface of any land owned, occupied or controlled by an educational institution (including its governing body) or of any building, structure, apparatus, plant or other object in or on any such land.
- (10) But a surface is not a relevant surface unless—
- (a) in the case of a surface within subsection (9)(a), the street is public land;
  - (b) in the case of a surface within subsection (9)(b) or (c)—
    - (i) the land is public land,
    - (ii) the surface is visible from public land, or
    - (iii) the surface is otherwise visible to members of the public using the services or facilities of the statutory undertaker or educational institution in question or any other statutory undertaker or educational institution.
- (11) A person is responsible for a relevant surface if—
- (a) where it is the surface of any land (including a street), he owns, leases, occupies, controls, operates or maintains the land, and
  - (b) where it is the surface of any other thing mentioned in subsection (9), he owns, leases, occupies, controls, operates or maintains the thing.
- (12) In this section and in sections 49 to 52—
- “educational institution” has the meaning given by section 98(2) of the Environmental Protection Act 1990,
- “graffiti” includes painting, writing, soiling, marking or other defacing by whatever means,
- “graffiti removal notice” has the meaning given by subsection (2),
- “local authority” means an authority in England and Wales which is a litter authority for the purposes of section 88 of the Environmental Protection Act 1990 (c. 43),
- “proper address” is to be read in accordance with section 160(4) and (5) of the Environmental Protection Act 1990,
- “public land” means land to which the public are entitled or permitted to have access with or without payment (including any street to which the public are so entitled or permitted),

“statutory undertaker” has the meaning given by section 98(6) of the Environmental Protection Act 1990,

“street” has the meaning given by section 48(1) of the New Roads and Street Works Act 1991 (c. 22).

#### **49 Recovery of expenditure**

- (1) A local authority may recover from the person on whom a graffiti removal notice was served expenditure reasonably incurred in exercise of the power under section 48(4).
- (2) A local authority may not recover expenditure from a person under subsection (1) unless it has served on that person a notice which sets out the amount of, and details of, the expenditure which it proposes to recover.
- (3) Section 160 of the Environmental Protection Act 1990 has effect in relation to notices under subsection (2) as if they were notices within subsection (2) of that section.

#### **50 Guidance**

- (1) The Secretary of State must issue guidance to local authorities in England for the purposes of sections 48 and 49.
- (2) The National Assembly for Wales must issue guidance to local authorities in Wales for the purposes of sections 48 and 49.
- (3) A local authority must have regard to any guidance issued to it under this section.

#### **51 Appeals**

- (1) A person on whom a graffiti removal notice is served may, within the period of 21 days beginning with the day on which it is served, appeal against the notice to a magistrates' court on any of the following grounds.
- (2) They are—
  - (a) that the defacement is neither detrimental to the amenity of the area nor offensive,
  - (b) that there is a material defect or error in, or in connection with, the notice,
  - (c) that the notice should be served on another person.
- (3) Where an appeal under subsection (1) is brought, the graffiti removal notice shall be of no effect pending the final determination or withdrawal of the appeal.
- (4) On the determination of such an appeal, the magistrates' court must do one of the following—
  - (a) quash the notice,
  - (b) modify the notice,
  - (c) dismiss the appeal.
- (5) Where the court modifies the notice or dismisses the appeal, it may extend the period specified in the notice.
- (6) A person on whom a notice under section 49(2) is served may, within the period of 21 days beginning with the day on which it is served, appeal to a magistrates' court on the grounds that the expenditure which the authority is proposing to recover is excessive.

- (7) On the determination of an appeal under subsection (6), the magistrates' court must do either of the following—
- (a) confirm that the amount which the authority is proposing to recover is reasonable, or
  - (b) substitute a lower amount as the amount which the authority is entitled to recover.

## **52 Exemption from liability in relation to graffiti removal notices**

- (1) None of the persons mentioned in subsection (2) is to have any liability to any person responsible for the relevant surface 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—
- (a) the power under subsection (4) of section 48 (including as provided for in subsection (5) of that section), or
  - (b) the power under subsection (8) of that section.
- (2) Those persons are—
- (a) in the case of the power mentioned in subsection (1)(a)—
    - (i) the local authority and any employee of the authority, and
    - (ii) any person authorised by the authority under section 48(4) and the employer or any employee of that person, and
  - (b) in the case of the power mentioned in subsection (1)(b), the local authority and any employee of the authority.
- (3) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been 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 made 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 (c. 42).
- (4) This section does not affect any other exemption from liability (whether at common law or otherwise).
- (5) Section 48(11) is to apply for the purposes of this section as it applies for the purposes of that section.