

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3: Litter and Refuse

Offence of dropping litter

Section 18 Extension of litter offence to all open places

68. Section 87 of the Environmental Protection Act 1990 (“the 1990 Act”) makes it an offence to drop litter in a place in the open air to which the public are entitled or permitted to have access without payment, including any covered place open to the air on at least one side and to which the public has access. It also includes relevant land owned by local authorities, statutory undertakers, designated educational institutions and Crown land.
69. **Section 18** extends the scope of that offence so that it becomes an offence to drop litter *anywhere* in the open air in the area of a principal litter authority, regardless of ownership. However, under this section it is not an offence to drop litter in a covered place open to the air on at least one side to which the public does **not** have access.
70. The offence extends to dropping litter into bodies of water, such as rivers or lakes. The area of a local authority which is on the coast extends down to the low-water mark under section 72 of the Local Government Act 1972. Therefore it becomes an offence to drop litter anywhere above the low water mark (and thus an offence to drop litter on beaches).
71. It does not extend the duty on principal litter authorities (and others) to keep their relevant land clear of litter and refuse as set out in section 89 of the 1990 Act.
72. The exceptions to the offence that are set out in section 87 of the 1990 Act are amended so that no offence is committed if the littering was authorised by law or done by or with the consent of the owner, occupier, or other authority or person having control of the area (*subsection (4A)*). Consent may only be given in relation to a watercourse, lake or pond if the same person owns all the surrounding land (*subsection (4B)*).

Section 19 Litter offence: fixed penalty notices

73. **Section 19** amends section 88 of the 1990 Act, under which an authorised officer of a litter authority may give a person who he has reason to believe has committed an offence under section 87 a notice offering that person the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.

74. *Subsection (2)* amends section 88 to enable a principal litter authority to specify the amount of fixed penalty to be applied in its area; where the authority sets no such amount the fixed penalty shall be £75. Powers set out in section 97A (introduced by section 24) of the 1990 Act enable regulations to be made by the Secretary of State or the National Assembly for Wales to set a minimum and maximum range within which the fixed penalty amount can be set. The litter authority to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.
75. *Subsection (3)* inserts new section 88 (8A)-(8C) that provides that where an authorised officer of a litter authority proposes to give a person a fixed penalty notice, he may require that person to give him his name and address, and it is an offence for that person to fail to do so or to give false or inaccurate information.
76. *Subsection (4)* classifies all parish and community councils as litter authorities. This has the effect of enabling parish and community councils to authorise officers to serve fixed penalty notices for the litter offence under section 88 of the 1990 Act. Under *subsection (6)* the Secretary of State or the National Assembly for Wales may make regulations prescribing conditions that must be met by an individual before he can be authorised by a parish and community council to issue fixed penalty notices. This could, for example, relate to certain training standards or competencies.
77. In *subsection (5)* the description of an “authorised officer” is extended under a revised section 88(10) to allow litter authorities to authorise individuals other than their own employees to issue fixed penalty notices on their behalf.

Local authority notices

Section 20 Litter clearing notices

78. Previously principal litter authorities could apply the duty in section 89 of the 1990 Act for land to be kept clear of litter and refuse to other public places (such as shopping centres) by designating litter control areas under section 90 of the 1990 Act. Any occupier of relevant land within that area was then required to keep their land free from litter and refuse. However, litter control areas were very infrequently used by local authorities which considered the process for designation to be overly complicated.
79. **Section 20** repeals the power to designate litter control areas (and Schedule 5 repeals provisions of the 1990 Act which are consequential on that power). As an alternative, the section inserts a new section 92A into the 1990 Act empowering principal litter authorities to serve “litter clearing notices” on particular occupiers where they are of the view that defacement caused by the litter or refuse is detrimental to the amenity of the area.
80. Under this measure, a litter clearing notice may be served on an occupier of any land in the open air except for land specified in section 92A(11). If the land is unoccupied, the notice may be served on the owner. Notices may require the land to be cleared of litter and refuse within a certain time, and may specify steps to be taken to prevent future defacement. Section 92A(7) allows the appropriate person (as described in section 98(1A) introduced by section 26) to issue guidance to local authorities on any aspect of their use of litter clearing notices, for example, in relation to standards that may be specified for the clearance of the litter and refuse. Section 92A(8) also gives the appropriate person an order-making power to specify the form and content of litter clearing notices.
81. Section 92B gives a person on whom a litter clearing notice is served the right of appeal to a magistrates’ court and sets out the grounds on which such an appeal may be made.
82. Section 92C makes it an offence to fail without reasonable excuse to comply with a litter clearing notice. Where a person fails to meet the requirements of a notice, a principal

litter authority may itself enter the land to remove the litter and refuse. An authority may then impose a reasonable charge for this on the person who failed to comply with the notice.

Section 21 Street litter control notices

83. Under sections 93 and 94 of the 1990 Act, certain principal litter authorities can prevent accumulations of litter and refuse in and around any street or open land adjacent to any street by issuing a street litter control notice. This imposes requirements on occupiers of premises to deal with litter and refuse.
84. **Section 21** amends sections 93 and 94 of the 1990 Act. *Subsection (1)* extends the application of street litter control notices to cover also vehicles, stalls and other moveable structures used for street vending, so that mobile vendors can also be required to take steps to minimise and clear up litter and refuse on any street or open land adjacent to it that originates from their commercial or retail activities.
85. Prior to section 21 coming into force, a person only committed an offence in relation to a street litter control notice if, on an application by the authority, he failed to comply with an order of the magistrates' court requiring compliance with the notice. This required the authority to first seek a court order for compliance where a street litter control notice is not complied with, which made it difficult and costly for the authority to enforce.
86. *Subsections (2) and (3)* amend this to make it an immediate offence not to comply with the requirements of a street litter control notice, thus dispensing with the requirement on the authority first to seek an order from the magistrates' court ordering compliance.

Section 22 Failure to comply with notice: fixed penalty notices

87. **Section 22** inserts section 94A into the 1990 Act to enable an authorised officer of the authority to issue a notice to a person who he has reason to believe has not complied with a litter clearing notice or a street litter control notice, offering that person an opportunity to discharge any liability to conviction for an offence by payment of a fixed penalty.
88. Section 94A(4) enables a principal litter authority to specify the amount of fixed penalty applicable in its area for the offences under sections 92C and 94; the fixed penalty (for either offence) is set at £100 where no amount is set by a local authority. Section 94A(5) permits the principal litter authority to make provision for treating the fixed penalty as paid if a lesser sum is received by it within such (shorter) period as it may specify.
89. The use of receipts from these fixed penalty notices is dealt with under section 96.

Free distribution of printed matter

Section 23 Controls on free distribution of printed matter

90. **Section 23** inserts section 94B and Schedule 3A into the 1990 Act. This gives principal litter authorities the power to control the distribution of free literature to prevent such material from becoming litter in the local environment.
91. Prior to section 23 coming into force, local authorities in London and the Council of the City of Newcastle upon Tyne had the power to designate areas in which the distribution of free literature can only occur with the consent of the authority (under section 4 of the London Local Authorities Act 1994 and section 22 of the City of Newcastle upon Tyne Act 2000). Distribution in these areas without consent was an offence punishable by a fine and the local authority may also seize any such literature.
92. **Section 23** repeals these powers and replaces them with similar legislation on a national basis, enabling all principal litter authorities to place restrictions on the distribution of free literature, through the designation of areas where this control will apply, and the establishment of a consent system.

93. **Paragraph 1** of Schedule 3A makes it an offence to distribute, commission or pay for the distribution of free literature without consent in a designated area. Material distributed for charitable, religious and political purposes is exempted from the offence. The offence does not extend to putting literature inside a building or letter-box, nor does it apply where the distribution takes place entirely within a public service vehicle, such as a bus or coach.
94. **Paragraph 2** enables an authority to make an order to designate areas where this offence will apply. It sets out the procedure and requirements for achieving designation, including public notification, consideration of objections and timing of designation.
95. **Paragraph 3** enables an authority to issue consents for the distribution of free literature in a designated area. This includes provisions allowing an authority to impose conditions on the consent to prevent defacement and ensure enforcement, to refuse consent in certain circumstances, and to revoke consent. The consent may also specify that others can also distribute the material in accordance with that consent, for example, a distributor, an individual or the employees of the applicant.
96. **Paragraph 4** enables an authority to charge a fee, within the confines of overall cost recovery for this Schedule. Paragraph 5 provides for appeal to a magistrates court.
97. **Paragraph 6** enables an authorised officer of an authority to seize the material when an offence is committed. A person claiming ownership of the literature may apply to the magistrates' court requesting the return of this material.
98. **Paragraph 7** enables an authority, or any person authorised by an authority, to issue a fixed penalty notice for this offence, offering the offender an opportunity to discharge any liability to the offence.
99. This paragraph enables an authority to specify the amount of fixed penalty and set provisions for variable payment rates, for example, for a lesser amount if the fine is paid within a specified time period. The fixed penalty is set at £75 where no amount is set by an authority.
100. **Paragraph 7** also provides an authorised officer of an authority with the power to require the name and address of a person to whom he intends giving a penalty notice, and makes it an offence to give inaccurate information.

General

Section 24 Fixed penalty notices: common provision

101. **Section 24** introduces a new section 97A into the 1990 Act, applying general provisions relating to the fixed penalty notices associated with the offence of dropping litter, litter clearing notices, street litter control notices and the distribution of printed matter. It enables the appropriate person (the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales) to make regulations which may set a range within which a locally determined fixed penalty amount must fall. Such regulations may also restrict the extent to which and the circumstances in which an authority may permit the payment of lesser amounts. The section also enables the appropriate person, by order, to change the amount of the fixed penalty where no local rate is set by the relevant authority.

Section 25 Exclusion of liability

102. **Section 25** further amends the 1990 Act, by introducing new section 97B. That section protects a principal litter authority and any other person described in section 97B(2) against liability to an occupier or owner of land for damages or otherwise arising out of the exercise of certain powers relating to entry on to land (as specified in the section) in the context of either a litter clearing notice or a litter abatement notice. The

*These notes refer to the Clean Neighbourhoods and Environment
Act 2005 (c.16) which received Royal Assent on 7 April 2005*

circumstances in which this exclusion does not apply are also set out (bad faith, lack of due care etc).

Section 26 “Appropriate person”

103. **Section 26** introduces into section 98 of the 1990 Act a definition of the “appropriate person” for the purposes of Part 4 as the Secretary of State in relation to England, and the National Assembly for Wales in relation to Wales.

Section 27 Meaning of “litter”

104. **Section 27** clarifies the meaning of “litter” for the purposes of Part 4 of the 1990 Act, by specifically including cigarettes, cigars and like products and discarded chewing gum (including bubble gum). Although these were already considered to fall within the definition of litter, the intention of this section is to provide clarity for practitioners.