

# CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 4: Graffiti and Other Defacement**

#### **Graffiti and fly-posting**

#### ***Section 28 Graffiti and fly-posting offences: fixed penalty notices***

105. Section 43 of the Anti-social Behaviour Act 2003 allows authorised officers to issue fixed penalty notices for the offences of graffiti and fly-posting, and previously sets the amount payable for a graffiti or fly-posting fixed penalty notice at £50.
106. **Section 28** of this Act enables a local authority to vary the fixed penalty amount for a graffiti or fly-posting offence in its area. Where no amount is specified by a local authority, this section also raises the base amount from £50 to £75. This amount may be changed by an order made by the appropriate person. In either case, the local authority may provide for a lesser amount to be paid if early payment is made within a specified period. In addition, the appropriate person (the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales) may make regulations relating to the fixed penalty amount, for example to specify a range within which the amount should fall.
107. Parish and community councils (by way of their qualifying as “litter authorities” under section 88(9)(f) of the 1990 Act, and thus as “local authorities” under these provisions) are also given the power to issue fixed penalty notices for the graffiti and fly-posting offences. The effect of *subsections (2) and (3)* of section 28 (relating to the definition of “relevant local authority”) is to require them to adopt the amount specified by the local authority.

#### ***Section 29 Fixed penalty notices: powers to require name and address***

108. **Section 29** further amends the Anti-social Behaviour Act 2003 to give an authorised officer of a local authority the power to require the name and address of a person to whom he proposes to give a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

#### ***Section 30 Fixed penalty notices: authorised officers***

109. **Section 30** extends the definition of an “authorised officer” to allow local authorities to authorise individuals other than their own employees for the purpose of giving notices for graffiti and fly-posting offences.

110. *Subsection (2)* 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 prescribing conditions that a person must satisfy before a parish or community council may authorise that person to issue notices on their behalf for graffiti and fly-posting offences.

### ***Section 31 Extension of graffiti removal regime to fly-posting***

111. Sections 48 to 52 of the Anti-social Behaviour Act 2003 enable local authorities to issue notices requiring the removal of graffiti within 28 days from certain surfaces to statutory undertakers (such as railways and port authorities) or a person responsible for street furniture. If the graffiti removal notice is not complied with, the local authority can remove the graffiti themselves and reclaim their costs.
112. **Section 31** amends the powers to issue graffiti removal notices (in respect of the defacement of a relevant surface to a degree that is detrimental to the amenity of an area or that is offensive) under sections 48-52 of the Anti-social Behaviour Act 2003 by extending their application to cover illegal advertising (fly posting). This enables a removal notice to be issued requiring the removal of any poster or flyer displayed on a relevant surface in contravention of regulations made under section 220 of the Town and Country Planning Act 1990.
113. **Paragraph 17** of Schedule 4 makes consequential amendments to the Anti-social Behaviour Act 2003 so as to re-name these notices as “defacement removal notices”.

### ***Section 32 Sale of aerosol paints to children***

114. Section 54 of the Anti-social Behaviour Act 2003 makes it an offence to sell aerosol paints to persons aged under 16. Section 32 introduces a new section 54A concerning the enforcement of section 54.
115. Section 54A(1) requires a local weights and measures authority to consider, at least once a year, the extent to which it is appropriate to have a programme of enforcement action in relation to section 54 and, to that extent, to carry out such a programme.
116. Section 54A(2) sets out what measures a programme of enforcement action may contain. Guidance will set out what "other measures" in section 54A(2)(c) may include.

## **Advertisements**

### ***Section 33 Unlawful display of advertisements: defences***

117. It is an offence under section 224 of the Town and Country Planning Act 1990 to display an advertisement in contravention of regulations under section 220 of that Act. The offence is capable of being committed by a person who owns land where the advertisement is displayed, or whose business or concerns are advertised.
118. However, prior to section 33 of this Act coming into force, there was a defence for such a person, namely where he proves that the advertisement was displayed without his knowledge or consent. That presented a difficulty for local authorities, which effectively had to prove that the person both knew of and consented to the display of the advertisement, making it very hard to secure a conviction.
119. The Act amends the statutory defence. It removes the requirement for a local authority to prove that a person consented to the display of an advertisement in contravention of regulations.
120. The amended defence is that the advertisement was either displayed without the knowledge of the person; or that he either took all reasonable steps to prevent the display, or to secure its removal after the advertisement had been displayed.

**Section 34 Removal of placards and posters**

121. Section 225 of the Town and Country Planning Act 1990 enables a local authority to serve a notice on a person who has illegally displayed placards and posters, and to remove or obliterate these posters or placards where that person has failed to do so himself within the time specified in that notice.
122. Where a person has failed to comply with such a notice, section 34 enables a local authority to recover the costs they incurred in removing or obliterating the illegally-displayed posters or placards.
123. In the first instance, the costs of removal are recoverable from the person identified in the poster or placard as having displayed it or having caused it to be displayed. However, if he cannot be identified, *subsection (4)* permits the local authority to recover costs from an identifiable person whose goods, services or concerns are publicised in the poster or placard (i.e. the beneficiary of the advertisement). Costs can only be recovered if he has failed to comply with a notice requiring him to remove the placard or poster within a specified time.
124. *Subsection (5)* enables any person suffering damage to land or chattels caused by a local authority who is exercising these powers to receive compensation for that damage - other than a person who displayed, or caused the display, of the offending poster or placard.
125. *Subsection (6)* amends the 1990 Act to enable a local authority to enter both occupied and unoccupied land in order to remove unlawful posters or placards.