



# Clean Neighbourhoods and Environment Act 2005

## 2005 CHAPTER 16

### PART 3

#### LITTER AND REFUSE

##### *Offence of dropping litter*

#### **18 Extension of litter offence to all open places**

In section 87 of the Environmental Protection Act 1990 ([c. 43](#)) (offence of leaving litter), for subsections (1) to (4) substitute—

- “(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.”

## 19 Litter offence: fixed penalty notices

(1) Section 88 of the Environmental Protection Act 1990 (c. 43) (fixed penalty notices for leaving litter) is amended as follows.

(2) For subsections (6) and (7) (amount of fixed penalty) substitute—

“(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.

(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.”

(3) After subsection (8) insert—

“(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.”

(4) In subsection (9), at the end insert—

“(f) a parish or community council.”

(5) In subsection (10), for the definition of “authorised officer” substitute—

““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;”.

(6) After that subsection insert—

“(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.”

### *Local authority notices*

## **20 Litter clearing notices**

(1) Section 90 of the Environmental Protection Act 1990 (c. 43) (litter control areas) shall cease to have effect.

(2) After section 92 of that Act insert—

### **“92A Litter clearing notices**

- (1) A principal litter authority may in accordance with this section serve a notice (a “litter clearing notice”) in relation to any land in its area which is open to the air.
- (2) Before serving a litter clearing notice in relation to any land a principal litter authority must be satisfied that the land is defaced by litter or refuse so as to be detrimental to the amenity of the locality.
- (3) A litter clearing notice is to require the person on whom it is served—
  - (a) to clear the land of the litter or refuse; and
  - (b) if the principal litter authority is satisfied that the land is likely to become defaced by litter or refuse again, to take reasonable steps to prevent it from becoming so defaced.
- (4) A litter clearing notice must be served on—
  - (a) the occupier of the land to which it relates; or
  - (b) if the land is not occupied, the owner.
- (5) A litter clearing notice imposing a requirement under subsection (3)(a) above may specify—
  - (a) a period within which the requirement must be complied with;
  - (b) standards of compliance.
- (6) A period specified under subsection (5)(a) above may not be less than 28 days beginning with the day on which the notice is served.

- (7) A principal litter authority must, in discharging its functions under this section, have regard to any guidance given to the authority by the appropriate person.
- (8) The form and content of a litter clearing notice is to be such as the appropriate person may by order specify.
- (9) Where a principal litter authority proposes to serve a litter clearing notice in respect of any land but is unable after reasonable enquiry to ascertain the name or proper address of the occupier of the land (or, if the land is unoccupied, the owner)—
  - (a) the authority may post the notice on the land (and may enter any land to the extent reasonably necessary for that purpose), and
  - (b) the notice is to be treated as having been served upon the occupier (or, if the land is unoccupied, the owner) at the time the notice is posted.
- (10) Subsection (1) above does not apply to an English county council for an area for which there is a district council.
- (11) A litter clearing notice may not be served in relation to land of any of the following descriptions—
  - (a) a highway maintainable at the public expense;
  - (b) land under the direct control of a principal litter authority;
  - (c) Crown land;
  - (d) relevant land of a designated statutory undertaker;
  - (e) relevant land of a designated educational institution;
  - (f) land which is covered (but “open to the air” for the purposes of this Part by virtue of section 86(13) above) and to which the public are not entitled or permitted to have access, with or without payment.

### **92B Appeals against litter clearing notices**

- (1) A person on whom a litter clearing notice is served under section 92A above may appeal against it to a magistrates' court in accordance with the provisions of this section.
- (2) An appeal under this section must be made within a period of 21 days beginning with the day on which the notice is served.
- (3) The grounds on which an appeal under this section may be made are that—
  - (a) there is a material defect or error in, or in connection with, the notice;
  - (b) the notice should have been served on another person;
  - (c) the land is not defaced by litter or refuse so as to be detrimental to the amenity of the locality;
  - (d) the action required is unfair or unduly onerous.
- (4) A notice against which an appeal under this section is made is of no effect pending the final determination or withdrawal of the appeal.
- (5) On the determination of an appeal under this section, the magistrates' court must—
  - (a) quash the notice;

- (b) modify the notice (including modifying it by extending the period specified in it); or
- (c) dismiss the appeal.

### **92C Failure to comply with litter clearing notice**

- (1) This section applies where the person on whom a litter clearing notice is served under section 92A above fails without reasonable excuse to comply with any requirement imposed by the notice.
- (2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) The principal litter authority which served the notice or any person authorised by the authority may enter the land to which the notice relates and clear it of litter and refuse.
- (4) Where a principal litter authority exercises the power in subsection (3) above, it may require the person on whom the notice was served to pay a reasonable charge in respect of the exercise of the power.
- (5) A principal litter authority may for the purposes of subsection (4) above impose charges by reference to land of particular descriptions or categories (including categories determined by reference to surface area)."

## **21 Street litter control notices**

- (1) In section 93 of the Environmental Protection Act 1990 (c. 43) (street litter control notices), after subsection (3) insert—
  - "(3A) A vehicle or stall or other moveable structure which is used for one or more commercial or retail activities while parked or set at a particular place on or verging a street is to be treated for the purposes of this section and section 94 below as if it were premises situated at that place having a frontage on that street in the place where it is parked or set.
  - (3B) In subsection (3A) above, "vehicle" means any vehicle intended or adapted for use on roads."
- (2) In section 94 of that Act (supplementary provisions in relation to street litter control notices), in subsection (4)(b) after "so specified" insert "(including the standards to which any such thing must be done)".
- (3) In that section, for subsections (8) and (9) substitute—
  - "(8) A person commits an offence if, without reasonable excuse, he fails to comply with a requirement imposed on him by a notice.
  - (9) A person guilty of an offence under subsection (8) above is liable on summary conviction to a fine not exceeding level 4 on the standard scale."

## **22 Failure to comply with notice: fixed penalty notices**

After section 94 of the Environmental Protection Act 1990 (c. 43) insert—

**“94A Fixed penalty notices relating to sections 92C and 94**

- (1) This section applies where on any occasion it appears to an authorised officer of a principal litter authority that a person has committed an offence under section 92C(2) or 94(8) above in relation to a notice served by that authority.
- (2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority.
- (3) Subsections (2) to (5) of section 88 above (fixed penalty notices for leaving litter) apply in relation to notices given under this section as they apply in relation to notices given under that section.
- (4) The amount of a fixed penalty payable to a principal litter authority under this section is—
  - (a) the amount specified by the authority in relation to its area (and an authority may specify different amounts for the two different offences referred to in subsection (1) above); or
  - (b) if no amount is so specified, £100.
- (5) The principal 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.
- (6) In any proceedings a certificate which—
  - (a) purports to be signed by or on behalf of the chief finance officer of a principal litter authority; and
  - (b) states that payment of a fixed penalty was or was not received by the date specified in the certificate,
 is evidence of the facts stated.
- (7) In this section—
 

“authorised officer”, in relation to a principal litter authority, means an officer of the authority who is authorised in writing by the authority for the purposes of giving notices under this section;

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

*Free distribution of printed matter***23 Controls on free distribution of printed matter**

- (1) In the Environmental Protection Act 1990 (c. 43), after section 94A (as inserted by section 22 above) insert—

**“94B Free distribution of printed matter**

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

- (2) In that Act, after Schedule 3 insert—

## “SCHEDULE 3A

### FREE DISTRIBUTION OF PRINTED MATTER ON DESIGNATED LAND

#### **Offence of unauthorised distribution**

- 1 (1) A person commits an offence if he distributes any free printed matter without the consent of a principal litter authority on any land which is designated by the authority under this Schedule, where the person knows that the land is so designated.
- (2) A person commits an offence if he causes another person to distribute any free printed matter without the consent of a principal litter authority on any land designated by the authority under this Schedule.
- (3) A person is not guilty of an offence under sub-paragraph (2) if he took reasonable steps to ensure that the distribution did not occur on any land designated under this Schedule.
- (4) Nothing in this paragraph applies to the distribution of printed matter—
  - (a) by or on behalf of a charity within the meaning of the Charities Act 1993, where the printed matter relates to or is intended for the benefit of the charity;
  - (b) where the distribution is for political purposes or for the purposes of a religion or belief.
- (5) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) For the purposes of this Schedule—
  - (a) to “distribute” printed matter means to give it out to, or offer or make it available to, members of the public and includes placing it on or affixing it to vehicles, but does not include putting it inside a building or letter-box;
  - (b) printed matter is “free” if it is distributed without charge to the persons to whom it is distributed.
- (7) For the purposes of this Schedule a person does not distribute printed matter if the distribution takes place inside a public service vehicle (within the meaning of the Public Passenger Vehicles Act 1981).

#### **Designation**

- 2 (1) A principal litter authority may by order in accordance with this paragraph designate land in its area for the purposes of this Schedule.
- (2) The land designated must consist of—
  - (a) relevant land of the authority;
  - (b) all or part of any relevant highway for which the authority is responsible; or
  - (c) both.

- (3) A principal litter authority may only designate land where it is satisfied that the land is being defaced by the discarding of free printed matter which has been distributed there.
- (4) Where a principal litter authority proposes to make an order under sub-paragraph (1) above in respect of any land, it must—
  - (a) publish a notice of its proposal in at least one newspaper circulating in an area which includes the land; and
  - (b) post such a notice on the land.
- (5) A notice under sub-paragraph (4) above must specify—
  - (a) the land proposed to be designated;
  - (b) the date on which it is proposed that the order is to come into force (which may not be earlier than the end of a period of 28 days beginning with the day on which the notice is given);
  - (c) the fact that objections may be made to the proposal, how they may be made and the period within which they may be made (being a period of at least 14 days beginning with the day on which the notice is given).
- (6) Where after giving notice under sub-paragraph (4) above and taking into account any objections duly made pursuant to sub-paragraph (5)(c) above an authority decides to make an order under sub-paragraph (1) above in respect of any or all of the land in respect of which the notice was given, the authority must—
  - (a) publish a notice of its decision in at least one newspaper circulating in an area which includes the land; and
  - (b) post such a notice on the land.
- (7) A notice under sub-paragraph (6) above must specify the date on which the order is to come into force, being a date not earlier than—
  - (a) the end of the period of 14 days beginning with the day on which the notice is given; and
  - (b) the date referred to in sub-paragraph (5)(b) above.
- (8) A principal litter authority may at any time revoke an order under sub-paragraph (1) above in respect of any land to which the order relates.
- (9) A principal litter authority must—
  - (a) publish a notice of any revocation under sub-paragraph (8) above in at least one newspaper circulating in an area which includes the land in question; and
  - (b) post such a notice on the land.
- (10) Sub-paragraph (1) above does not apply to an English county council for an area for which there is a district council.

### **Consent and conditions**

- 3 (1) A principal litter authority may on the application of any person consent to that person or any other person (identified specifically or by description) distributing free printed matter on any land designated by the authority under this Schedule.



- (2) Consent under this paragraph may be given without limitation or may be limited—
  - (a) by reference to the material to be distributed;
  - (b) by reference to a particular period, or particular times or dates;
  - (c) by reference to any part of the designated land;
  - (d) to a particular distribution.
- (3) A principal litter authority need not give consent under this paragraph to any applicant where it considers that the proposed distribution would in all the circumstances be likely to lead to defacement of the designated land.
- (4) Consent need not be given to any applicant if within the period of five years ending on the date of his application—
  - (a) he has been convicted of an offence under paragraph 1 above; or
  - (b) he has paid a fixed penalty under paragraph 7 below.
- (5) Consent may be given under this paragraph subject to such conditions as the authority consider necessary or desirable for—
  - (a) protecting the designated land from defacement; or
  - (b) the effective operation and enforcement of this Schedule.
- (6) The conditions which may be imposed by a principal litter authority under this paragraph include conditions requiring any person distributing printed matter pursuant to consent given under this paragraph to produce on demand written evidence of the consent to an authorised officer of the authority.
- (7) Consent given by a principal litter authority under this paragraph may at any time be revoked (entirely or to any extent) by notice to the person to whom it was given, where—
  - (a) he has failed to comply with any condition subject to which it was given; or
  - (b) he is convicted of an offence under paragraph 1 above or pays a fixed penalty under paragraph 7 below.
- (8) Any condition imposed under this paragraph in relation to any consent may be varied or revoked by notice given to the person to whom the consent was given.

## **Fees**

- 4 (1) A principal litter authority may require the payment of a fee before giving consent under paragraph 3 above.
- (2) The amount of a fee under this paragraph is to be such as the authority may determine, but may not be more than, when taken together with all other fees charged by the authority under this paragraph, is reasonable to cover the costs of operating and enforcing this Schedule.

## **Appeals**

- 5 (1) Any person aggrieved by a decision of a principal litter authority under paragraph 3 above—

- (a) to refuse consent,
  - (b) to impose any limitation or condition subject to which consent is given,
  - (c) to revoke consent (or to revoke it to any extent),
- may appeal against the decision to a magistrates' court.
- (2) A magistrates' court may on an appeal under this paragraph—
- (a) uphold any refusal of consent or require the authority to grant consent (without limitation or condition or subject to any limitation or condition);
  - (b) require the authority to revoke or vary any condition;
  - (c) uphold or quash revocation of consent (or uphold or quash revocation to any extent).

### **Seizure of material**

- 6
- (1) Where it appears to an authorised officer of a principal litter authority that a person distributing any printed matter is committing an offence under paragraph 1 above, he may seize all or any of it.
  - (2) Any person claiming to own any printed matter seized under this paragraph may apply to a magistrates' court for an order that the printed matter be released to him.
  - (3) On an application under sub-paragraph (2) above, if the magistrates' court considers that the applicant does own the printed matter, the court shall order the principal litter authority to release it to him, except to the extent that the court considers that the authority needs to retain it for the purposes of proceedings relating to an offence under paragraph 1 above.
  - (4) Any printed matter seized under this paragraph (and not released under sub-paragraph (3) above) must be returned to the person from whom it is seized—
    - (a) at the conclusion of proceedings for the offence (unless the court orders otherwise);
    - (b) at the end of the period in which proceedings for the offence may be instituted, if no such proceedings have been instituted in that period (or have been instituted but discontinued).
  - (5) Where it is not possible to return any printed matter under sub-paragraph (4) above because the name and address of the person from whom it was seized are not known, a principal litter authority may dispose of or destroy it.

### **Fixed penalty notices**

- 7
- (1) This paragraph applies where on any occasion it appears to an authorised officer of a principal litter authority that a person has committed an offence under paragraph 1 above on any land designated by the authority under this Schedule.

- (2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority.
- (3) Subsections (2) to (5) of section 88 above apply in relation to notices given under this paragraph as they apply to notices under that section.
- (4) The amount of the fixed penalty payable to a principal litter authority under this paragraph—
  - (a) is the amount specified by the authority in relation to its area; or
  - (b) if no amount is so specified, is £75.
- (5) The principal litter authority to which a fixed penalty is payable under this paragraph 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.
- (6) In any proceedings a certificate which—
  - (a) purports to be signed on behalf of the chief finance officer of a principal litter authority, and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,is evidence of the facts stated.
- (7) If an authorised officer of a principal litter authority proposes to give a person a notice under this paragraph, the officer may require the person to give him his name and address.
- (8) A person commits an offence if—
  - (a) he fails to give his name and address when required to do so under sub-paragraph (7) above; or
  - (b) he gives a false or inaccurate name or address in response to a requirement under that sub-paragraph.
- (9) A person guilty of an offence under sub-paragraph (8) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this paragraph, “chief finance officer”, in relation to a principal litter authority, means the person having responsibility for the financial affairs of that authority.

### **Supplementary**

- 8 In this Schedule “authorised officer”, in relation to a principal litter authority, means—
  - (a) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under paragraph 7 above;
  - (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.”

*General***24 Fixed penalty notices: common provision**

After section 97 of the Environmental Protection Act 1990 (c. 43) insert—

**“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.”

**25 Exclusion of liability**

In the Environmental Protection Act 1990 (c. 43), after section 97A (as inserted by section 24 above) insert—

**“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.
- (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)."

## **26 "Appropriate person"**

In section 98 of the Environmental Protection Act 1990 (definitions), after subsection (1) insert—

"(1A) "Appropriate person" means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the National Assembly for Wales."

## **27 "Litter"**

In section 98 of the Environmental Protection Act 1990 (definitions), after subsection (5) insert—

"(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."