

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

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Clean Neighbourhoods and Environment Act 2005 which received Royal Assent on 7 April 2005. They have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. In 2002 a review of the legislative framework for providing and maintaining a clean and safe local environment was carried out by Defra to accompany the cross-Government report *Living Places – Cleaner, Safer, Greener*. The review found that the powers, duties and guidance for dealing with problems associated with local environmental quality were not working as effectively as they should be, and produced options for delivering changes. These options were contained in the consultation paper *Living Places – Powers, Rights, Responsibilities* launched at the Urban Summit on 31 October 2002. Some were introduced into legislation in Part 6 of the Anti-social Behaviour Act 2003. The majority of the options were developed further and included as proposals for legislative action within the Clean Neighbourhoods consultation launched on 25 July 2004.
4. Most of the measures in this Act are based on these proposals, amended as appropriate to take account of comments received during the consultation process.

Part 1: Crime and Disorder

5. This Part amends the law relating to crime and disorder reduction partnerships to require them to take into account anti-social and other behaviour adversely affecting the local environment; and makes provision for the gating of minor highways that attract anti-social behaviour.

Part 2: Vehicles

6. This Part introduces two new offences relating to nuisance parking and amends the law relating to abandoned and illegally parked vehicles.

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Part 3: Litter and Refuse

7. This Part extends the statutory offence of dropping litter and amends the powers and duties of local authorities in relation to litter.

Part 4: Graffiti and Other Defacement

8. This Part amends the law relating to graffiti, fly-posting and the illegal display of advertisements.

Part 5: Waste

9. This Part makes miscellaneous provision about waste. Chapter 1 makes provision about the registration of carriers of particular kinds of waste. Chapter 2 makes provision about the illegal deposit of waste ("fly-tipping") and about the powers and duties of local authorities to collect and dispose of waste. Chapter 3 makes provision to deal with waste generated at construction sites.

Part 6: Dogs

10. Chapter 1 allows local authorities and parish and community councils to create offences relating to the control of dogs. This power is intended as a more convenient alternative to existing powers to create byelaws. In particular, the new offences do not need to be approved by the Secretary of State. The new system replaces the Dogs (Fouling of Land) Act 1996.

11. Chapter 2 relieves the police of most of their statutory responsibilities for stray dogs.

Part 7: Noise

12. This Part addresses various issues relating to noise nuisance. Local authorities are given new powers to deal with noise from intruder alarms. The powers for dealing with night time noise nuisance are extended from domestic premises to cover also licensed premises. This Part also allows local authorities to employ alternative means to resolve complaints about noise qualifying as a statutory nuisance prior to issuing an abatement notice.

Part 8: Architecture and the Built Environment

13. This Part establishes a statutory body to take the place of a non-departmental public body, the Commission for Architecture and the Built Environment. The provisions create a statutory Commission (with the same name), set out its general functions, transfer the staff and resources of the old Commission to the statutory Commission and dissolve the old Commission.

Parts 9 and 10

14. These Parts contain miscellaneous and supplementary provisions.

TERRITORIAL EXTENT

15. The Act extends only to England and Wales.

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TERRITORIAL APPLICATION: WALES

16. Generally, all Parts of the Act apply equally to Wales and England. The two significant exceptions are section 49 (payments for waste recycling and disposal) which is relevant to England only and Part 8 (CABE) which is of primary relevance to England.

17. Where provisions of the Act relating to Wales are commenced by order, it falls to the Assembly to commence them – see section 108(1)(b) and (2).

THE ACT

COMMENTARY ON SECTIONS

PART 1: CRIME AND DISORDER

Section 1 Crime and disorder reduction strategies

18. Section 6 of the Crime and Disorder Act 1998, as amended by the Police Reform Act 2002, requires "responsible authorities" to formulate and implement "crime reduction strategies". For this purpose, "responsible authorities" are local authorities, chief police officers, police authorities, fire and rescue authorities and primary care trusts (see section 5 of the 1998 Act as amended).

19. In formulating their strategies, the authorities concerned do not necessarily consider low-level anti-social behaviour and environmental crime (such as littering, graffiti, fly-posting, nuisance vehicles and fly-tipping) in their strategies. Section 1 amends section 6 so as to require such matters to be taken into account, requiring them to have regard to offences which damage the local environment as part of the continuum from litter, graffiti, fly tipping etc to wider issues of crime and disorder.

Section 2 Gating orders

20. Section 2 inserts a new part (Part 8A) in the Highways Act 1980. This section provides local authorities with a means to erect, or allow the erection of, a physical barrier to restrict public access to a highway over which the public would normally have a right of passage.

21. In built-up areas there are many minor highways giving rear and side access to properties and providing shortcuts between blocks of properties. They range from narrow footpaths and alleyways to highways capable of accommodating vehicular traffic. Some of these highways provide opportunities to access the rear of properties for illegal entry and concealment and cover for criminal acts and anti-social behaviour. This power will predominantly be used to address crime and anti-social behaviour in built-up areas.

22. 'Gating', that is, blocking some or all of the access points to the highway using metal gates, may reduce these problems. This section provides a means whereby a local authority may 'gate' a highway, where they would otherwise have a duty both to assert and protect the rights of the public to use the highway and to prevent its obstruction.

23. Section 129A provides for a local authority to make a 'gating' order in respect of a highway that is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affects local residents or businesses. This section excludes certain types of public highway by definition.

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24. A gating order would restrict the public right of way over the highway and, where necessary, authorise the installation of gates or barriers to enforce the restrictions.

25. Section 129B sets out the extent of the restrictions a gating order may impose on the public right of way over the highway. This includes restricting access for certain periods or times of the day or at all times. Access for occupiers of premises adjoining or adjacent to the highway cannot be restricted, nor can a gating order be made if it forms the only or principal means of access to dwellings. If it forms the only or principal access to premises used for business or recreational purposes, it cannot restrict access during the times of day when these premises are normally used.

26. Certain people may be specified in the order to be exempted from the restriction, such as emergency services and those with a legitimate reason for accessing any premises adjacent to the highway. In practice, this would involve the provision of keys to such people, or the opening of the gates during certain times/periods when such people would expect to use the highway.

27. This power does not permanently extinguish rights of way, making it possible to subsequently revoke the restrictions and reinstate the public's right to use the highway, if appropriate.

28. Section 129C sets out the procedures a local authority must follow in making a gating order. A local authority is required to notify occupiers of properties affected by the order, and others to be specified by regulation, and take their representations into account. They must also hold a public inquiry in any circumstances which might be provided for in regulations. Section 129C also provides for regulations setting out the detailed procedures for public consultation.

29. Section 129D enables a person to challenge the validity of a gating order in the High Court on certain specified grounds. On an application under this section the Court may suspend, quash or allow the gating order to stand.

30. Section 129E requires a gating order to be publicised and made available for public scrutiny.

31. Section 129F sets out the circumstances in which a gating order may be revoked or varied and the procedures for doing so. It also enables regulations relating to revocation or variation to be made.

PART 2: VEHICLES

Nuisance Parking

Section 3 Exposing vehicles for sale on a road

32. Some garages and other businesses which sell cars at times park them for long periods on the road. This can be a nuisance to local residents. Section 3 makes it an offence for a person to park motor vehicles on a road or roads, where the vehicles are parked merely in order to be sold. There must be *two or more* vehicles *within 500 metres of each other* for the offence to be committed.

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33. The provision is not aimed at individuals selling cars privately, so a person will not be convicted if he can prove that he was not acting for the purposes of a business (see *subsection (2)*). *Subsection (3)* sets out the penalties.

34. A 'road' is as defined in section 142 of the Road Traffic Regulation Act 1984 (c.27) as any length of highway or of any other road to which the public has access. Whether a piece of land is a road or not is a matter of fact. The main feature of a road is that the general public has a right to use it as a means of getting from A to B. The definition includes all highways (all the land to which the public has a right to pass along for the purpose of legitimate travelling and includes both the carriageway and footpath) and also access roads through estates that are owned by organisations such as Housing Associations or by the residents who live there. A car park for example would not normally come within the definition of a road as its function is to enable people to leave their vehicles.

35. Under *subsection (4)* 'motor vehicle' has the same meaning as in the Refuse Disposal (Amenity) Act 1978 (c.3) which is "a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer".

Section 4 Repairing vehicles on a road

36. This section addresses the nuisance caused by people repairing their vehicles on the street. This can take up valuable parking space for long periods, looks unsightly and can be directly damaging to the local environment (for example where oil is spilled or leaked). Section 4 makes it an offence to carry out "restricted works" to vehicles on a road.

37. There are two exceptions. The first is where a person proves he was not repairing the vehicle in the course of a business (*subsection (3)(a)*). But this is only available where the works did not give "reasonable cause for annoyance" to persons in the vicinity. So even a person carrying out repairs otherwise than for a business can be convicted if the works gave cause for annoyance.

38. The second exception is where the repairs arose from a breakdown or accident and were carried out promptly or were otherwise authorised (*subsection (5)*).

39. The definitions of 'road' and 'vehicle' are the same as in the previous section (see paragraph 34 above).

Section 6 Power to issue fixed penalty notice

40. *Subsection (1)* enables any person authorised by a local authority to issue a fixed penalty notice for the offences of exposing vehicles for sale or repairing a vehicle on the road, offering the offender an opportunity to discharge any liability for the offence. *Subsection (8)* fixes the amount of the penalty at £100 which can be amended by order under *subsection (9)*. Under *subsection (10)* the local 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.

Section 7 Fixed penalty notices: power to require name and address

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41. *Subsection (1)* provides an authorised officer of a local authority with the power to require the name and address of an offender if the officer proposes to give him a penalty notice. *Subsection (2)* makes it an offence to fail to provide the information asked for or to give inaccurate information.

Section 8 Use of fixed penalty receipts

42. *Subsections (2) and (3)* enable local authorities to use the receipts from fixed penalty notices issued pursuant to section 6 for the purposes of their functions under the Refuse Disposal (Amenity) Act 1978, under sections 99 to 102 of the Road Traffic Regulation Act 1984, functions relating to the enforcement of sections 3 and 4, and for other functions as are specified in regulations.

43. *Subsections (4) to (7)* make further provisions relating to the spending of fixed penalty receipts.

44. *Subsection (8)* allows regulations governing the spending by English local authorities of fixed penalties received pursuant to section 6 to be linked to categories of local authority (categorised in an order made pursuant to section 99(4) of the Local Government Act 2003). This is achieved by treating the regulation-making powers in section 8 as though they were included in section 100(2) of the Local Government Act 2003. For example, a local authority categorised as ‘excellent’ might be allowed (by virtue of regulations under *subsection (2)(d)*) to use its receipts for any of its functions.

Abandoned vehicles

Section 10 Offence of abandoning a vehicle: fixed penalty notices

45. This section inserts after section 2 of the Refuse Disposal (Amenity) Act 1978 (which makes it an offence to abandon a motor vehicle) three new sections - 2A, 2B and 2C.

46. Section 2A gives an authorised officer of a local authority the power to issue a fixed penalty notice in respect of an offence of abandoning a vehicle, offering the offender the opportunity to discharge any liability for the offence.

47. The sum is set at £200 by *subsection (8)* which can be amended by order as set out in *subsection (9)*. Under *subsection (10)* the local 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.

48. Section 2B enables an authorised officer of a local authority to require the name and address of the person to whom he proposes to issue a fixed penalty notice. A person commits an offence if he gives false or inaccurate details.

49. Section 2C enables local authorities to use the receipts from these penalties for the purposes of their functions under the Refuse Disposal (Amenity) Act 1978, and sections 99 to 102 of the Road Traffic Regulation Act 1984, functions relating to the enforcement of sections 3 and 4 and for other functions as are specified in regulations (*subsections (2) and (3)*). *Subsections (4) to (7)* make further provisions relating to the spending of fixed penalty receipts.

50. *Subsection (8)* of section 2C makes similar provision as described above for *subsection (8)* of section 8.

Section 11 Notice of removal of vehicles

51. This section amends section 3 of the Refuse Disposal (Amenity) Act 1978.

52. Previously under section 3(2) of the Refuse Disposal (Amenity) Act 1978, if a vehicle that appeared to be abandoned was found on private land, a notice had to be served on the occupier of the land; if the occupier did not respond, the local authority had to wait 15 days before removing the vehicle. When the vehicle was on a private driveway, there was no practical problem as the occupier was in a position to confirm whether or not it was abandoned. However, if the vehicle was on a private road, it was difficult to identify the occupier; in those circumstances, some form of notice was often left on the vehicle to alert the owner. The notice at times attracted instances of anti-social behaviour such as vandalism and arson.

53. *Subsection (2)* removes the requirement to serve a notice on the occupier of land where the vehicle is on a 'road'. The definition of 'road' is as described in paragraph 34, and could include roads that pass through housing estates managed by registered social landlords and other local authority housing estates. This enables vehicles to be removed immediately from any road to which the public has access.

54. Section 3(5) of the Refuse Disposal (Amenity) Act 1978 required a local authority to affix a notice to a vehicle 24 hours prior to removal where it was considered to be in such a condition that it ought to be destroyed. There was no definition of what this meant but it could have included vehicles that had parts missing or were burnt out. The 24-hour notice at times attracted instances of anti-social behaviour such as vandalism and arson.

55. *Subsection (3)* revokes section 3(5) of the Refuse Disposal (Amenity) Act 1978. It enables local authorities to immediately remove any vehicle in such a condition if they think it has been abandoned.

Section 12 Disposal of abandoned vehicles

56. Section 12 relates to the steps a local authority must take before they can dispose of an abandoned vehicle.

57. Under section 4 of the Refuse Disposal (Amenity) Act 1978, prior to section 12 of this Act coming into force, a vehicle could only be destroyed immediately after removal where it had been removed under section 3(5) (being that it was in such a condition that it ought to be destroyed) and did not display a current licence. Where a current licence was displayed, this had to expire before destruction could take place. In other cases the local authority had to take steps to ascertain who the owner was and, if found, to serve a notice telling him of the vehicle's removal. If no owner could be found, or the owner failed to respond to the notice within 7 days, the vehicle could then be disposed of unless it displayed a current licence. Again, if a licence was displayed, the authority had to wait for its expiry before destruction.

58. Waiting for the expiration of the licence led to further storage costs being incurred by local authorities where the vehicle was only fit for destruction or the owner either could not be traced or had chosen not to collect it.

59. Section 12 amends section 4 of the Refuse Disposal (Amenity) Act 1978 by removing the requirement to wait for the expiration of a valid licence. This has the effect of allowing any vehicle that is only fit for destruction to be destroyed immediately. In other cases, if the

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owner either cannot be traced or fails to respond to a notice the vehicle can then be disposed of.

60. This section also amends section 4 by allowing immediate disposal where neither a registration mark (plate) is shown or current licence displayed. Without that information, it is considered unreasonable to expect the authority to trace the owner (either of these would provide a way to check the DVLA register or make enquiries in other countries). This section allows these vehicles to be disposed of immediately.

Section 13 Guidance

61. This section obliges authorities to have regard to guidance given by the “appropriate person” when exercising their functions in relation to the removal and disposal of vehicles.

Section 14 Abandoned vehicles: supplementary

62. This section provides a definition of “appropriate person” for the purposes of the powers conferred by sections 10 to 13. The effect is that the powers are conferred on the Secretary of State in relation to England, and the National Assembly for Wales in relation to Wales.

63. *Subsection (2)* amends section 10(5) of the Refuse Disposal (Amenity) Act 1978 so that any orders or regulations made by the National Assembly for Wales under new sections 2A and 2C are to be made by statutory instrument by negative resolution.

Vehicles illegally parked etc

Section 15 Notices of Removal; section 16 Disposal; section 17 Guidance

64. These sections make similar changes to the Road Traffic Regulation Act 1984 (“the 1984 Act”) to those to the Refuse Disposal (Amenity) Act 1978 described above.

65. Section 15 amends section 99 of the 1984 Act. It inserts the words “other than a road” after the word “land” in subsection (3). This has the effect of removing the requirement to serve the occupier of land with a notice where that land is a road. It also removes the requirement to attach a notice on a vehicle that is considered in such a condition that it ought to be destroyed by omitting subsection (4). This mirrors the amendments made by section 11 to the Refuse Disposal (Amenity) Act 1978 for the same reasons. The 1984 Act has similar provisions for dealing with abandoned vehicles as are contained in the Refuse Disposal (Amenity) Act 1978 but there is only a power for local authorities to act, not a duty as under section 3 of the 1978 Act.

66. Section 16 amends section 101 of the 1984 Act. It makes various amendments to subsection (3) that mirror the amendments made by section 12. It allows for the removal of vehicles that do not display either a valid licence or a registration mark (plate) and also removes the requirement to wait for the expiration of a valid licence before the vehicle can be disposed of.

67. Section 17 inserts into section 103 of the 1984 Act the requirement for local authorities exercising functions under sections 99 to 103 of the Act to have regard to any guidance issued by the Secretary of State or the National Assembly for Wales as the case may be.

PART 3: LITTER AND REFUSE

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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)*

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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

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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.

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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 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.

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.

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

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.

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which received Royal Assent on 7 April 2005*

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.

PART 5: WASTE

CHAPTER 1: TRANSPORT OF WASTE

Section 35 Unregistered transportation: defence of acting under employer's instructions

126. Under section 1 of the Control of Pollution (Amendment) Act 1989, it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste within Great Britain in the course of any business of his or otherwise with a view to profit. Controlled waste is defined as household, industrial and commercial waste.

127. Section 35(1) amends section 1 of the Control of Pollution (Amendment) Act 1989 so as to remove the defence (at section 1(4)(c)) of acting under one's employer's instructions.

Section 36 Registration requirements and conditions

128. Section 2 of the Control of Pollution (Amendment) Act 1989 sets out provisions as to the registration of waste carriers. Section 36 amends the provisions in section 2 relating to certificates of registration for carriers of controlled waste (in relation to which provision can be made in regulations under that section). In particular, it removes the requirement that a certificate of registration, and copies of such a certificate, must be provided free of charge.

129. This section also provides (by way of new section 2(4A) and (4B) of the 1989 Act) that regulations under this section may include provision for the registration of carriers of controlled waste to be subject to conditions relating to the vehicles they use, as well as for the possible revocation of a registration in the event of breach of such a condition. In support of this, the regulations may provide for inspections of such vehicles and charges for such inspections.

Section 37 Enforcement powers

130. Section 37 substitutes section 5 of the Control of Pollution (Amendment) Act 1989 with new sections 5 and 5A. The principal effect is to enable a constable or an authorised officer of a regulation authority (i.e. the Environment Agency or a waste collection authority) to stop, search and seize a vehicle that he reasonably believes is being used in the commission of an offence under section 1 of that Act (transporting controlled waste without being registered).

131. Section 5 sets out the powers of an authorised officer or a constable in relation to such a vehicle and its contents. Only a constable in uniform may stop a vehicle on the road. A vehicle or its contents which are seized by a constable in the presence of an authorised officer of a regulation authority are seized on behalf of that authority; where the constable is acting alone then the vehicle or contents seized are seized on behalf of the waste collection authority in whose area the seizure takes place.

132. Section 5(7) re-enacts the offence under the previous section 5 of failing to comply with a requirement to produce authority for transporting controlled waste; it also creates new offences of failing to assist or otherwise obstructing an authorised officer or constable.

133. Section 5(9) gives the authorised officer or constable a power to require any occupant of the vehicle to give his name and address, or that of the registered owner of the vehicle, or any other information he may reasonably request. By section 5(10) it is an offence to fail to give such information or to give information which is knowingly or recklessly false or misleading, punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

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134. Section 5A empowers the appropriate person (the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales) to make regulations specifying how a regulation authority must deal with vehicles or their contents seized under section 5, and to issue guidance to a regulation authority in relation to its performance of its functions under such regulations.

Section 38 Failure to produce authority: fixed penalty notices

135. Section 38 inserts sections 5B and 5C into the Control of Pollution (Amendment) Act 1989. Under section 5B, where it appears to an authorised officer of a regulation authority that a person has committed an offence under section 5(7)(a) (failure to produce authority for transporting controlled waste) he may issue that person with a notice, offering him an opportunity to discharge by payment of a fixed penalty any liability to conviction for the offence. By section 5B(9) the fixed penalty is set at £300, though a different amount may be substituted by an order made by the appropriate person under section 5B(10). By section 5B(11) a regulation authority may make provision for treating a fixed penalty as having been paid if a lesser amount is paid within a shorter specified period, and by section 5B(12) the extent and circumstances for doing so may be subject to restrictions in regulations made by the appropriate person.

136. Section 5C allows a waste collection authority to retain the receipts arising from fixed penalty notices issued pursuant to section 5B, and specifies the functions for which the receipts may be used. Section 5C(9) makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

Section 39 Interpretation

137. Section 39 inserts definitions of “appropriate person” and “authorised officer” in section 9 of the Control of Pollution (Amendment) Act 1989. The former is defined as the Secretary of State in relation to England, and the National Assembly for Wales in relation to Wales.

CHAPTER 2: DEPOSIT AND DISPOSAL OF WASTE

Offence of unlawful deposit of waste etc

Section 40 Defence of acting under employer’s instructions

138. Section 40 amends section 33 of the Environmental Protection Act 1990 (under which it is an offence to make an unauthorised or harmful deposit etc. of waste) so as to remove the defence (at section 33(7)(b)) of acting under one’s employer’s instructions.

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which received Royal Assent on 7 April 2005*

Section 41 Penalties on conviction

139. Section 41(1) amends the penalties available for offences under section 33 of the 1990 Act. It increases the maximum available fine on summary conviction for the illegal disposal of waste from £20,000 to £50,000 and raises the maximum term of imprisonment on conviction on indictment for non-hazardous waste offences to five years (the same as is already applied for offences involving hazardous waste).

Section 42 Investigation and enforcement costs

140. Section 42 inserts a new section 33A into the 1990 Act. Section 33A applies where a person is convicted of an offence under section 33 and enables the court to make an order requiring the offender to pay the enforcing authorities' investigation and enforcement costs, and any costs associated with seizure of vehicles involved in the offence. In this section, the enforcement authorities are defined as the Environment Agency and waste collection authorities.

Section 43 Clean-up costs

141. Section 43 inserts a new section 33B into the 1990 Act. Section 33B applies where a person has been convicted of an offence under section 33(1) of the 1990 Act consisting of the deposit or disposal of controlled waste. It enables the court to make an order requiring the offender to pay to either the Environment Agency or a waste collection authority or the occupier of land or the owner of land, any costs incurred by them in removing waste that has been illegally deposited or disposed of in or on land, or in taking steps to eliminate or reduce the consequences of the deposit or both.

Section 44 Forfeiture of vehicles

142. Section 44 inserts a new section 33C into the 1990 Act. Section 33C applies where a person has been convicted of an offence involving contravention of section 33(1) of the 1990 Act consisting of the deposit or disposal of controlled waste. Section 44 enables the court to make an order to deprive the offender of his rights to a vehicle (and its contents) if the court is satisfied that the vehicle was used in or for the purpose of the commission of the offence.

143. The order by the court may give possession of the vehicle and its contents to the relevant enforcement authority. The new section 33C requires a court to take into account the value of the vehicle, the impact of forfeiture on the offender, the offender's need to use the vehicle lawfully, and, if it appears that the offender is engaged in a business that illegally disposes of waste, whether the order is likely to be dissuasive of further such activity.

Offences relating to documentation

Section 45 Failure to furnish documentation: fixed penalty notices

144. Section 34 of the 1990 Act places a duty on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to secure a written description of the waste whenever it is transferred. Section 34(5) provides for regulations to be made to require such documents to be retained and furnished.

145. Section 45 inserts a new section 34A into the 1990 Act. Section 34A empowers an enforcement authority to issue a fixed penalty notice to a person who has failed to comply with a requirement to furnish documents under regulations made under section 34(5),

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offering him the opportunity to discharge any liability to conviction for an offence by payment of a fixed penalty.

146. The amount of the fixed penalty is set at £300, which may be substituted by a different amount by an order made by the appropriate person. By section 34A(11), the enforcement authority may make provision for treating the fixed penalty as being paid if a lesser amount is paid during such shorter period as it may specify. By section 34A(12) the appropriate person may make regulations restricting the extent to which and circumstances in which an authority may provide for such reduced early payments. The new section 73A (section 52) below makes provision about the use of such receipts.

Offences: powers of seizure

Section 46 Power to search and seize vehicles

147. *Subsection (1)* of section 46 inserts new sections 34B and 34C into the 1990 Act. These sections confer powers to stop, search and seize a vehicle (and its contents) where it is reasonably believed that the vehicle has been, is being, or is about to be, used in the commission of an offence under section 33 or 34.

148. Section 34B allows an authorised officer of an enforcement authority or a constable to seize a vehicle and its contents but only a constable in uniform may stop a vehicle on the road. A vehicle or its contents seized by a constable in the presence of an authorised officer of an enforcement authority are seized on behalf of that authority; where a vehicle or its contents are seized by a constable acting alone they are seized on behalf of the waste collection authority in whose area the seizure took place.

149. Section 34B(7) creates offences of failing to assist or otherwise intentionally obstructing an authorised officer or constable.

150. Section 34B(8) empowers an authorised officer or a constable to demand the name and address of any occupant of a vehicle he has stopped under this section, the name and address of the registered owner of the vehicle, or any other information he may reasonably request.

151. By section 34B(9) it is an offence to fail without reasonable excuse to give this information, or to give information which is knowingly or recklessly false or misleading. Any offence under section 34B is punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5,000).

152. New section 34C empowers the appropriate person (described in section 34C(6)) to make regulations specifying how an enforcement authority must deal with any seized property and to issue guidance to enforcement authorities in relation to their performance of their functions under such regulations.

153. *Subsection (2)* also extends to waste collection authorities the use of notices under section 71(2) of the 1990 Act to include functions conferred by the new sections 34C and 34D.

Local authority waste collection and disposal

Section 47 Abolition of requirement to contract out waste disposal functions

154. Prior to this section coming into force, waste disposal authorities (county councils and unitary authorities) were required by the Environmental Protection Act 1990 to make arrangements for the disposal of all municipal waste collected in their area. Section 32 of the 1990 Act required them to divest themselves of their waste disposal undertakings and transfer them to either 'arm's length' companies or wholly to the private sector. Waste disposal authorities had to carry out their waste disposal functions by means of letting contracts. The contract-letting procedures for waste disposal authorities required by the 1990 Act were no longer considered necessary given the requirements of the Public Contracts Services Regulations 1993. They also limited the range of procurement options open to waste disposal authorities to carry out their functions which may have led to conflict with their Best Value duty to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

155. Section 47 repeals section 32 of and Schedule 2 to the 1990 Act, thereby repealing the requirement for waste disposal authorities to have to form waste disposal companies; limiting companies thus formed to waste functions only; and requiring waste disposal authorities to dispose of controlled waste only through waste disposal contractors. This allows waste disposal authorities greater opportunity to affect improvement in the way that best fits their local circumstances.

Section 48 Offences relating to waste receptacles: fixed penalty notices

156. Section 48 inserts new sections 47ZA and 47ZB into the 1990 Act. Section 47ZA applies where an authorised officer of a waste collection authority has reason to believe that a person has committed an offence under section 46 or 47, and enables the officer to issue a notice to that person, offering him an opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

157. Section 47ZB enables a waste collection authority to specify the amount of the fixed penalty in its area; the fixed penalty is set at £100 where no amount is set by an authority. In either case, a lesser amount may be permitted to be paid if early payment is made within a specified period.

158. Section 47ZB(4) gives powers to the appropriate person to make regulation governing the power of waste collection authorities to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent to which and circumstances in which a local authority may provide for reduced early payment).

Section 49 Payments for waste recycling and disposal

159. Prior to section 49 coming into force, section 52 of the Environmental Protection Act 1990 imposed a duty on waste disposal authorities to make payments to waste collection authorities in their area. It provided for payments to be made by both tiers to third parties where waste is retained for recycling. The purpose of these payments was to offset any disincentive to recycle by making available to recyclers the savings in disposal and collection costs in respect of waste retained.

160. That system was introduced before many of the other policy levers designed to encourage recycling were put in place, and needed reform to bring it in to line. Particular

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issues were: increasing payment costs to waste disposal authorities; the inflexible system of payments between waste collection and waste disposal authorities; re-use not incentivised in same way as recycling; payments to third parties being inconsistently administered; and, planned reform of the Joint Waste Disposal Authority levy will negate the need for payments to waste collection authorities in these areas.

161. Section 49 amends section 52 of the 1990 Act to give the Secretary of State the power to make regulations in England to set the method of calculation of the payments. This will allow calculations to take into account increasing disposal costs due to diversion from landfill and the rising rate of landfill tax.

162. Section 52(1A) gives the Secretary of State the power to disapply by order the duty on a Joint Waste Disposal Authority to make payments to a waste collection authority in respect of waste collected and retained for recycling. This will allow removal of the duty once the levy system in these areas is reformed to directly incentivise recycling by the waste collection authorities.

163. Section 52(1B) exempts a waste disposal authority in England from the duty to make payments to a waste collection authority in respect of waste retained by the waste collection authority where the two authorities agree to alternative arrangements. Where no such mutually agreed arrangements are in place the duty to make payments applies.

164. Section 52(8A) gives the Secretary of State the power to produce guidance to assist English waste collection and disposal authorities in determining whether to make payments to third parties in respect of waste collected for the purpose of recycling.

165. Section 52(12) clarifies that payments should be made in respect of all waste recycled including waste which is re-used with or without undergoing any treatment.

Section 50 Power to require owner of land to remove waste

166. Section 50(2) inserts section 59ZA into the 1990 Act. Where controlled waste was deposited in or on any land in contravention of section 33(1) of the 1990 Act, section 59 previously enabled a notice to be served on only the *occupier* of land, requiring him to remove the waste or to take such specified steps with a view to eliminating or reducing its consequences.

167. Section 59ZA enables a notice to be served on the *owner* of the land requiring him to clear waste from it in circumstances where there is no occupier of the land or the occupier cannot be found without the enforcing authority incurring unreasonable expense or the occupier has successfully appealed against a notice served in him. An occupier or owner can appeal the notice if he neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste. If an occupier or owner fails to comply with the requirements in a notice, section 59 enables the Environment Agency or a waste collection authority to enter the land, remove the waste or take such specified steps and recover the costs of doing so from the occupier or owner.

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which received Royal Assent on 7 April 2005*

Supplementary

Section 51 “Appropriate person”

168. Section 51 amends the definition of an authorised person in section 29 of the Environmental Protection Act 1990 as the Secretary of State in relation to England, and the National Assembly for Wales in relation to Wales.

Section 52 Use of fixed penalty receipts

169. Section 52 inserts section 73A into the 1990 Act, which allows a waste collection authority to retain the receipts arising from fixed penalty notices issued under section 34A or 47ZA, and specifies the functions under which the receipts may be used. It makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

Section 53 Supplementary enforcement powers

170. Section 53 amends section 108 of the Environment Act 1995. The effect is to enable waste collection authorities to use the powers of investigation under that section in investigating incidents or offences in relation to discharging any of their functions under Part 2 of the 1990 Act.

CHAPTER 3: SITE WASTE

Section 54 Site waste management plans

171. Section 54 provides powers for regulations to be made to require developers and contractors of construction and demolition projects to prepare site waste management plans. These plans must set out the arrangements for managing and disposing of waste created in the course of the project.

172. The regulations may be restricted to projects over a specified value and may specify, for example, when plans must be prepared; the contents of such plans; enforcement arrangements; offences and their penalties; and the possibility for the discharge of liability for an offence by the payment of a fixed penalty.

PART 6: DOGS

CHAPTER 1: CONTROLS ON DOGS

173. Prior to these provisions coming into force, local authorities and parish and town councils could make byelaws to control dogs on certain areas of land. Section 236 of the Local Government Act 1972 set out the byelaw-making process and required byelaws to be “confirmed” by the relevant authority before they could have effect. Dog byelaws for England were confirmed by the Secretary of State for Defra and in Wales by the National Assembly. Those committing an offence under a dog byelaw risked a fine of up to £500 in court.

174. This system was considered costly and complicated to administer, both for central and local government. The Act replaces the previous system of dog byelaws with a new system of “dog control orders”. This new system is modelled on the Dogs (Fouling of Land) Act 1996; this sets out an offence in the Act which can then be applied by local authorities by order in relation to designated land in their area.

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175. Likewise, under the new system local authorities and parish councils are able to provide by order for offences to apply in designated land in their area. The offences are standard offences which will be prescribed in regulations; the prescribed offences include fouling by dogs (and therefore the Dogs (Fouling of Land) Act 1996 has been repealed). But the new system also allows for other types of dog-related offence relating to the keeping of dogs on leads in designated areas, the exclusion of dogs from such areas and the maximum number of dogs that one person may walk in such an area.

176. It is intended that the regulations provide “model” offences which may then be applied by a local authority or parish council to specified areas of land accessible to the public; but (where appropriate) local authorities and parish councils will also be given some flexibility in relation to certain details of the offences; for example, the model offence in relation to the number of dogs that may be walked by one person may leave it to the local authority or parish council to specify whatever number of dogs they deem appropriate in relation to the land where the offence is to apply. It is also intended that local authorities and parish councils are able to specify penalties applicable to offences, within constraints set by regulations.

Dog control orders

Section 55 Powers to make dog control orders

177. Section 55 enables “primary authorities” (which equate to local authorities) and “secondary authorities” (meaning principally parish and town councils) to make orders that apply offences aimed at the control of dogs (‘dog control orders’) to specified land in their area.

178. *Subsection (3)* sets out the four categories of offence that can be provided for. The effect of *subsection (4)* is that the scope of offences that can be provided for in dog control orders are set out in regulations. It is intended that, where appropriate, the offences described in regulations are not applicable to working dogs and guide dogs.

56 Dog control orders: supplementary

179. Section 56 requires the appropriate person to make regulations which set out: the maximum penalties for dog offences; the content and format of dog control orders; and the process to be undertaken by primary and secondary authorities before and after making such orders (including requirements in respect of consultation on, and publication of, such orders).

Section 57 Land to which Chapter 1 applies

180. Section 57 provides that dog control orders may apply to all public land which is open to the air. *Subsection (3)* allows for exclusions, by order, to the types of land that can be subject to dog control orders.

Section 58 Primary and secondary authorities

181. This section defines primary and secondary authorities. Secondary authorities are parish and community councils (in England and Wales, respectively). *Subsection (3)* enables other bodies to be designated as secondary authorities. This is intended to deal with bodies, such as commons conservators, which have powers under private Acts to make byelaws to control dogs. It could also be used to designate statutory bodies with responsibilities for substantial areas of land.

Fixed Penalty Notices

Section 59 Fixed penalty notices

182. Section 59 allows authorised officers of primary and secondary authorities, or an authorised person working on their behalf, to issue a fixed penalty notice offering members of the public an opportunity to discharge any liability for offences under a dog control order.

183. Under this provision, an authorised officer of an authority can generally only issue a fixed penalty notice in respect of offences provided for by that authority. There is one exception: the effect of *subsection (1)(b)* is to enable an authorised officer of a secondary authority to issue a fixed penalty notice in its area in respect of a dog control order offence created by a primary authority.

Section 60 Amount of fixed penalties

184. Section 60 enables a primary or secondary authority to specify the amount of fixed penalty in relation to their own dog control orders. Authorities are also able to allow for the payment of a lesser amount if the fine is paid within a specified time period. Where no amount is specified at the local level, the fixed penalty is set at £75. Section 60 also provides the appropriate person (as defined in section 66) with the power to make regulations relating to the fixed penalty - in particular, to prescribe a range within which penalties fixed at the local level must fall; the appropriate person may also (by order) substitute the figure of £75 referred to above with a new amount.

Section 61 Power to require name and addresses

185. Section 61 provides an authorised officer of a primary or secondary authority with the power to require the name and address of a person if the officer proposes to give him 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 62 Community Support Officers etc

186. Chief Police officers can authorise ‘community support officers’ and ‘accredit’ other persons, under section 38 and section 41(2) of the Police Reform Act 2002 respectively, to issue fixed penalties on behalf of the police for certain offences specified in that Act. This section enables community support officers and other persons accredited by Chief Police officers to be given the power to issue fixed penalty notices relating to dog control offences.

Supplementary

Section 63 Overlapping powers

187. The new system of dog control orders enables both primary and secondary authorities to apply dog control offences to land in their area. However, the area of a secondary authority (in most cases a parish or community council) is comprised in the area of the higher tier primary authority. Therefore, under the new system it would be possible for both a primary and a secondary authority to apply a dog control offence to the same area of land.

188. The purpose of section 63 is to avoid such a situation arising where both a primary and secondary authority dog control order relating to the same type of offence exists in relation to the same land. The effect of this section is that if a primary authority makes a dog control order in relation to an area, a secondary authority will not be able to make a dog

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control order for the same type of offence in relation to the same area. Furthermore, where a primary authority makes a dog control order in relation to land that has previously been the subject of a dog control order made by a secondary authority for the same type of offence, the secondary authority dog control order will cease to have effect.

189. For example, if a district council (i.e. a primary authority) makes an order about dog fouling on land covered by a parish council (a secondary authority), the parish council cannot subsequently make an order relating to dog-fouling on the same land, and any order relating to dog fouling on that land that it has made previously will cease to have effect. However, the parish council will still be able to make, for example, orders requiring dogs to be kept on leads on that land and any such orders it has previously made in relation to that land will continue to have effect (assuming, of course, the district council does not make a similar such order itself in relation to that land).

190. Similarly, *subsection (2)* gives dog control orders made by parish and community councils superiority over those of secondary authorities designated under section 58(3).

Section 64 Byelaws

191. Section 64 removes the ability of primary and secondary authorities to make byelaws to control dogs in circumstances where it would also be possible for the authority to make a dog control order in respect of the same matter in relation to the land in question. Existing byelaws will remain in place unless that land is made the subject of a dog control order for the same type of offence. For example, if a local authority has a byelaw in place banning dogs from a local park, that byelaw will continue to have effect until such time as the authority makes a dog control order in relation to that park that likewise bans dogs.

Section 65 Dogs (Fouling of Land) Act 1996

192. This section repeals the Dogs (Fouling of Land) Act 1996: as mentioned above, dog fouling is now controlled by way of dog control orders.

Section 66 “Appropriate person”

193. Section 66 provides that the “appropriate person” for Chapter 1 of this Part is the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.

Section 67 Regulations and orders

194. Section 67 requires that any order or regulations made under section 55(4) or 56(1) be made by statutory instrument by affirmative resolution. Other regulations or orders made under chapter 1 of this Part are to be made by statutory instrument by negative resolution.

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

CHAPTER 2: STRAY DOGS

Section 68 Termination of police responsibility for stray dogs

195. This section removes the responsibility of the police for dealing with stray dogs, by repealing section 3 of the Dogs Act 1906 (which enabled police officers to seize stray dogs found in public places), save in so far as that section applies to the continuing powers of the police to seize and detain such dogs under the Dogs (Protection of Livestock) Act 1953, and by amending section 150 of the Environmental Protection Act 1990 (under which stray dogs found by members of the public could be taken to the nearest police station). Under section 150 of the 1990 Act a responsibility for stray dogs remains with the local authority (as defined in section 149 of that Act).

PART 7: NOISE

CHAPTER 1: AUDIBLE INTRUDER ALARMS

Alarm notification areas

196. Sections 69 to 76 introduce new powers for local authorities to deal with the annoyance caused by audible intruder alarms in their areas. The regime enables a local authority to designate its area (or part of it) as an alarm notification area. The effect of a designation is that the occupier or owner of any premises (residential or non-residential) in the area must notify the local authority of the details of a “key-holder” for the premises. The authority can then turn to that key-holder for assistance in silencing an alarm. Under these provisions it is an offence to fail to nominate or notify the local authority of the details of a key-holder.

Section 69 Designation of alarm notification areas

197. Section 69 sets out the steps that must be followed by a local authority wishing to designate an area as an alarm notification area. In particular, *subsection (5)* provides that an authority must consider representations on a proposal to make a designation and *subsection (8)* provides that where it decides to make a designation, the authority must send notice of that decision to all premises in the area.

Section 70 Withdrawal of designation

198. Section 70 enables a local authority to withdraw a designation made under section 69.

Section 71 Notification of nominated key-holders

199. Section 71 requires that the responsible person in respect of premises with an audible intruder alarm within an alarm notification area must nominate a key-holder for the premises and then notify the local authority of that key-holder’s name, address and telephone number. The responsible person is the occupier of (or a person entitled to occupy) the premises or, where there is no such person, the owner of the premises. Section 71(2) and (4) makes it an offence for the responsible person to fail either to nominate or to notify within the specified time period.

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

Section 72 Nomination of key-holders

200. Section 72 (*subsections (3), (4) and (5)*) describes who is eligible to be nominated as a key-holder.

201. *Subsection (6)* provides that where a key-holder ceases to satisfy certain requirements, the responsible person must nominate a replacement. The responsible person then, under section 71, has to notify the details of the new key-holder to the local authority. Again, failure either to nominate or notify is an offence.

Section 73 Offences under section 71:fixed penalty notices

202. Section 73 (*subsections (1) and (2)*) enables an “authorised officer” of a local authority, to issue a fixed penalty notice where it appears to him that an offence of failing to nominate or notify details of a key-holder has been committed, offering the offender an opportunity to discharge, by payment of a fixed penalty within 14 days, any liability to conviction for the offence. Who qualifies as an authorised officer is described in *subsection (11)*. The rest of the section sets out the effects of the fixed penalty notice, what information such a notice should contain, and procedures for payment.

Section 74 Amount of fixed penalty

203. Section 74 (*subsections (2) and (3)*) enables a local authority to specify the amount of a fixed penalty for an offence committed in its area. Where no amount is set by a local authority, the penalty amount is £75. In either case, a local authority may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

204. *Subsections (4) and (5)* give power to the Secretary of State or the National Assembly for Wales (as appropriate) to make regulations governing the power of local authorities to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent and circumstances in respect of which a local authority may provide for reduced early payment).

Section 75 Use of fixed penalty receipts

205. Section 75 (*subsections (1) to (3)*) allows a local authority to retain the receipts arising from fixed penalty notices issued pursuant to section 73, and specifies the functions for which the receipts may be used. These include its new functions in relation to audible intruder alarms, its functions under the Noise Act 1996 and its functions in relation to noise statutory nuisance under the Environmental Protection Act 1990.

206. *Subsections (4) to (7)* make further provision regarding the spending of fixed penalty receipts and include a power for the Secretary of State or the National Assembly for Wales (as the case may be) to make regulations about how local authorities can use their penalty receipts.

207. *Subsection (8)* makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

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

Section 76 Fixed penalty notices: power to require name and address

208. Section 76 provides an authorised officer of a local authority with the power to require the name and address of a person if the officer proposes to give him 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.

Powers in relation to alarms

Section 77 Power of entry

209. Section 77 (*subsections (3) and (4)*) provides an authorised officer of a local authority with a power of entry (but not by force) in order to silence an intruder alarm in or on premises in the authority's area where he is satisfied that the conditions described in section 77(2) are met. The use of the power is not limited to premises in an area which has been designated as an alarm notification area, but where the premises are in such an area, one of the conditions that must be satisfied before the power can be used is that reasonable steps have been taken to get the key-holder to silence the alarm.

Section 78 Warrant to enter premises by force

210. Section 78 provides that an authorised officer may enter premises using reasonable force if necessary to silence an alarm following the issue of a warrant by a justice of the peace. Before issuing a warrant, the justice of the peace must be satisfied certain conditions are met (*subsection (1)*). These include that the officer is unable to enter the premises without the use of force.

Section 79 Powers of entry: supplementary

211. Section 79 makes supplementary provision where an officer of a local authority enters any premises to silence an alarm either under section 77 or under a warrant issued under section 78.

212. This includes provision allowing a local authority to recover expenses reasonably incurred by it in connection with entering the premises and silencing the alarm (*subsection (7)*) and ensuring that action taken in good faith by the authority under these powers does not subject it to any liability (*subsection (9)*).

Supplementary

Section 80 Orders and regulations

213. Section 80 provides that orders or regulations made under chapter 1 of this Part of the Act are to be made by statutory instrument by negative resolution.

CHAPTER 2: GENERAL

Noise from premises

Section 82 Noise offences: fixed penalty notices

214. Section 82 makes various amendments to the provisions in the Noise Act 1996 relating to fixed penalties. The Noise Act 1996 previously permitted a local authority to deal with noise exceeding permitted levels from only dwellings at night-time. An authorised officer of a local authority can, under section 8 of the Act, give a person who he believes has

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

committed an offence under the Act a fixed penalty notice, offering him the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.

215. Section 82(3) introduces new sections 8A and 8B to the 1996 Act. Section 8A(2)(a) enables a local authority to set the level of the fixed penalty (in lieu of liability to conviction for an offence) in its area. The fixed penalty is set at £100 where no amount is specified by a local authority (which was the amount of the penalty under the previous regime). In either case, a local authority may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

216. Sections 8A(4) and (5) give powers to the Secretary of State or the National Assembly for Wales (as appropriate) to make regulations governing the power of local authorities to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent and circumstances in respect of which a local authority may provide for reduced early payment).

217. Section 8B provides an authorised officer of a local authority with the power to require the name and address of a person if the officer proposes to give him 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.

218. Section 84 and Schedule 1 (discussed below) amend the Noise Act 1996 by extending its effect to certain licensed premises as well as dwellings. The new sections 8A and 8B will apply equally to fixed penalties given in respect of an alleged offence in relation to licensed premises but Schedule 1 amends section 8A to provide that where the alleged offence relates to licensed premises, the amount of the fixed penalty will be fixed at £500 (with no power for a local authority to set an alternative).

Section 83 Noise offences: use of fixed penalty receipts

219. Section 83 amends section 9 of the Noise Act 1996, which contains provisions dealing with the use by local authorities of receipts from fixed penalty notices given under section 8 of that Act.

220. The amendments made by *subsection (2)* include in the list of qualifying functions for which a local authority can use those receipts its new functions relating to intruder alarms under Chapter 1 of Part 7 and its functions in relation to noise statutory nuisance under the Environmental Protection Act 1990.

221. *Subsection (3)* makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

Section 84 and Schedule 1 Extension of Noise Act 1996 to licensed premises etc

222. Section 84 and Schedule 1 extend the powers under the Noise Act 1996 for a local authority to take action to deal with noise at night (formerly restricted to noise from dwellings) to premises in respect of which there is either a premises licence or a temporary event notice in effect under the Licensing Act 2003 (referred to generally as “licensed premises”).

223. Schedule 1 amends the Noise Act 1996 in order to give effect to this extension. The new regime for licensed premises to all intents and purposes mirrors the existing one for dwellings.

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which received Royal Assent on 7 April 2005*

224. In particular, paragraph 6 of the Schedule inserts a new section 4A into that Act which provides that an offence is committed by the responsible person in respect of the licensed premises where, further to the service of a warning notice under section 3 (as amended by paragraph 4 of the Schedule), noise exceeding the permitted level is emitted from the premises in the period specified in the warning notice. The permitted level for noise from such premises will be determined by the Secretary of State under section 5 of the Noise Act 1996 (as amended by paragraph 7 of the Schedule) in time for the implementation of this provision.

225. The responsible person in respect of the premises is defined in the new *subsection (6)* to be inserted into section 3 of the Noise Act 1996. That person is, broadly speaking, the most senior person present at the premises at the time the offence is committed.

226. The amendments to the Noise Act 1996 in paragraphs 10 to 12 of Schedule 1 extend to licensed premises the provisions which enable a local authority to issue a fixed penalty notice in lieu of liability to conviction for an offence under the Act. The fixed penalty in respect of licensed premises is set at £500 (with no power for a local authority to set an alternative rate in its area).

227. Paragraphs 13 to 14 of Schedule 1 make amendments extending the 1996 Act's provisions on powers of entry and seizure to licensed premises.

Section 85 Noise Act 1996: supplementary

228. This section makes some technical amendments to the Noise Act 1996 to account for the transfer of functions of the Secretary of State relating to Wales under that Act to the National Assembly for Wales.

Statutory noise nuisances

Section 86 Deferral of duty to serve abatement notice

229. Section 86 amends section 80 Environmental Protection Act 1990 so as to enable a local authority to defer the issuing of an abatement notice in respect of noise which it is satisfied constitutes a statutory nuisance for seven days, while it takes any other appropriate steps to persuade the person on whom it would otherwise be serving the notice to abate the nuisance or prohibit or restrict its occurrence or recurrence. There is no obligation on the authority to pursue this alternative route – it may still proceed by issuing an abatement notice straightaway if it so chooses. If the authority does defer and the nuisance is not abated after the seven day period (or if the authority concludes before then that it will not be abated within that period), the authority must proceed to serve an abatement notice under section 80(1).

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which received Royal Assent on 7 April 2005*

PART 8: ARCHITECTURE AND THE BUILT ENVIRONMENT

Commission for Architecture and the Built Environment

230. Part 8 is concerned with the establishment of a statutory corporation known as the Commission for Architecture and the Built Environment (the “Commission”). Prior to Part 8 coming into force, there was a non-departmental public body of the same name (the “old Commission”), which was constituted as a private company limited by guarantee. The Act, in effect, transfers the functions, staff and property of the old Commission to the new statutory body, thereby putting the old Commission on a statutory footing. The old Commission is dissolved under the Act.

Section 87 and Schedule 2 Commission for Architecture and the Built Environment

231. Section 87 establishes the corporate body and Schedule 2 makes further provision about its constitution as well as other matters relating to its proceedings, accounts etc.

Section 88 General functions of the Commission

232. Section 88 sets out the general functions of the Commission, where it may operate, its powers and the conditions which apply to them. The functions of the Commission, which broadly reflect the objects of the old Commission under its memorandum of association, are the promotion of education and high standards in, and an understanding and appreciation of, architecture and the design, management and maintenance of the built environment.

233. *Subsection (4)* describes some of the specific powers that the Commission has for the purpose of discharging its functions. Again, these broadly reflect the powers of the old Commission, which are set out in its memorandum of association.

234. In *subsection (9)* the Commission is required, in discharging its functions, to have regard to national policies and advice relating to sustainable development contained in guidance issued by the Secretary of State. This provision is included in recognition of government's aim to deliver sustainable development. Policy in this area is broad in its aims in that it relates to social, economic and environmental factors.

235. *Subsection (10)* defines the “built environment” in terms that allow the Commission to carry out its functions not only in relation to buildings and structures but also in relation to open spaces designed for human use (such as parks and, recreation areas). It also ensures that the Commission’s remit covers any other area available for public use which is in the vicinity of a structure or “man-made” open space. This part of the definition is designed to ensure that natural areas such as commons, heaths and beaches in the vicinity of seaside towns can be within the Commission’s jurisdiction.

Section 89 Changes to the function of the Commission

236. This section enables the Secretary of State by order to amend the Commission’s functions. An order can only confer a further function on the Commission if the new function is connected either directly or indirectly to an existing or former function of the Commission. This provides flexibility should other functions arise which are complementary to the Commission’s existing or previous functions. The Commission’s role has changed since its inception (from promoting high standards in design and management of buildings and structures to also working in relation to the design and management of parks and public spaces) and this provision will ensure that similar changes can occur in the future.

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

Section 90 Power to dissolve the Commission

237. Section 90 enables an order to be made by the Secretary of State to wind up the Commission. It specifies that the order may, among other things, provide for the transfer of the functions, property, rights or liabilities of the Commission to another person. It also protects the employees by ensuring that an order made under this section will apply the Transfer of Undertakings (Protection of Employment) Regulations (“TUPE”) to the transfer of rights and liabilities relating to employees. There was no intention to dissolve the Commission at the time of the Act receiving Royal Assent, however, this provision is included so that it can be dissolved should a future need arise.

Section 91 Dissolution of the old Commission; Section 92 and Schedule 3 Transfer of staff, property etc from the old Commission

238. Section 91 provides for the dissolution of the old Commission. Section 92 gives effect to Schedule 3 which provides for the transfer of staff, property, rights and liabilities from the old Commission to the Commission. The effect of paragraph 1 of Schedule 3 is that TUPE applies to the transfer of staff. These transfers take place immediately before the dissolution of the old Commission.

Section 93 Tax

239. The effect of section 93 is that the transfers from the old Commission to the Commission under this Part are tax neutral. They do not give rise to any tax, or conferred a tax advantage, on either body. This is achieved mainly by treating the Commission as the same person as the old Commission for tax purposes.

Financial assistance

Section 94 Architecture and the built environment: financial assistance

240. This section enables the Secretary of State to provide financial assistance to any person, for the purposes described (which mirror the functions of the Commission).

241. If an order is made under section 89 to change the functions of the Commission, *subsection (4)* enables the Secretary of State to make an order amending the purposes for which financial assistance may be given under this section in a similar fashion to ensure that any changes to the Commission’s functions need not affect the availability of financial assistance.

Supplementary

Section 95 Orders

242. Section 95 requires that any order made under Part 8 is to be made by statutory instrument by affirmative resolution, with the exception of an order under paragraph 2(4) of Schedule 2, to vary the maximum or minimum numbers of members of the Commission.

PART 9: MISCELLANEOUS

Use of fixed penalty receipts

Section 96 Use of fixed penalty receipts: higher tier authorities

243. Section 96 enables “higher tier” authorities to use for certain functions the money received from any fixed penalty notices they issue in respect of certain offences relating to litter, graffiti fly-posting and dog control offences. In particular, in respect of litter the relevant offences are those of dropping litter, of failing to comply with a litter clearing notice or street litter control notice, and of distributing free printed matter without consent in a designated area.

244. Higher tier authorities are authorities other than a parish or community council, i.e. a local authority.

245. *Subsection (3), (4) and (5)* set out the functions that the receipts can be used for (which may be set out in regulations).

246. *Subsection (10)* makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

Section 97 Use of fixed penalty receipts: lower tier authorities

247. Section 97 relates to the use of receipts by “lower tier” authorities from fixed penalty notices issued by them for certain offences relating to litter, graffiti, fly-posting and dog control offences. Lower tier authorities are parish or community councils, or secondary authorities designated for dog control offences under section 58(3).

248. Section 97 requires regulations to be made relating to the use of such receipts collected by lower tier authorities. The regulations may specify which (if any) of their functions lower tier authorities may use their fixed penalty receipts for. Alternatively, the regulations could require such receipts to be paid to another person or body, such as the Secretary of State or National Assembly for Wales.

249. *Subsection (3)* allows regulations under section 97 to be linked to performance of lower tier authorities. For example, regulations under *subsection (1)* could make the use of fixed penalty receipts dependent on performance, such that high performing authorities could be allowed to spend their receipts on any of their functions.

Section 98: Sections 96 and 97: supplementary

250. Section 98 provides a definition of “appropriate person” for the purposes of the powers conferred by sections 96 and 97. The effect is that the powers are conferred on the Secretary of State in relation to England, and the Assembly in relation to Wales.

251. *Subsections (3) and (4)* require the regulations to be made by affirmative resolution.

Shopping and luggage trolleys

Section 99 Abandoned shopping and luggage trolleys

252. Section 99 amends Schedule 4 to the Environmental Protection Act 1990 so as to enable a local authority to charge the person believed to be the owner of an abandoned shopping or luggage trolley for its removal, storage and disposal. Prior to this section coming into force, charges were only payable by persons actually claiming the return of their trolleys.

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

If proceedings were brought against a person for the recovery of such a charge, it was a defence for him to prove that he was not the owner of the trolley at the time it was removed.

Section 100 Section 99: transitional provision

253. Section 100 sets out the transitional provisions that apply where, before section 99 comes into force, a local authority has resolved under section 99 of the Environmental Protection Act 1990 to apply Schedule 4 to that Act in its area.

254. *Subsection (2)* provides that such a resolution is to have no effect if the date it set for Schedule 4 to apply in the local authority's area fell on or after the day on which section 99 came into force.

255. If the resolution has already taken effect at the date section 99 comes into force, *subsections (3) to (5)* allow Schedule 4 to continue to apply in the local authority's area without the amendments made by the Act for no more than three years. These subsections do not prevent the local authority from resolving to apply Schedule 4 as amended by this Act at any time in those three years.

256. *Subsection (7)* ensures that a local authority, in fixing the level of charges to be imposed on the owners of seized trolleys, keeps separate the costs and charges associated with the new and old versions of Schedule 4.

Statutory nuisances

Section 101 Statutory nuisance: insects

257. This section amends section 79 of the Environmental Protection Act 1990 so as to provide that the statutory nuisances listed in that section include "insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance". This has the effect of subjecting nuisance insects from such premises to the statutory nuisance regime in Part 3 of the Environmental Protection Act 1990.

258. The effect of *subsection (3)* is to prevent any insect included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), other than those included in respect of Section 9(5) of that Act only, from constituting the new form of statutory nuisance.

259. *Subsection (5)* inserts Section 79(7C) of the Environmental Protection Act 1990 which describes what industrial, trade or business premises are relevant industrial, trade or business premises. Certain types of land (including types of farmland and land within a Site of Special Scientific Interest) and certain waters are excluded.

Section 102 Statutory nuisance: lighting

260. Section 102 amends section 79 of the Environmental Protection Act 1990 so as to provide that the statutory nuisances listed in that section include "artificial light emitted from premises so as to be prejudicial to health or a nuisance". This has the effect of subjecting nuisance lighting to the statutory nuisance regime in Part 3 of the Environmental Protection Act 1990.

261. *Subsections (3) to (6)* make provision about exempting artificial lighting emitted from certain premises from constituting a statutory nuisance: such premises include those occupied for defence purposes, various transport-related premises, and prisons.

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

262. Section 79(8) of the Environmental Protection Act 1990 refers to existing arrangements under which a port health authority has responsibility for dealing with some statutory nuisances. *Subsection (7)* has the effect of excluding nuisance lighting from these arrangements.

Section 103 Sections 101 and 102: supplementary

263. Section 103 amends section 80(8) and section 82(10) of the Environmental Protection Act 1990 so that the defence of having used best practicable means to prevent, or counteract the effects of, a statutory nuisance will only be available for either of the new statutory nuisances if the nuisance arises on industrial, trade or business premises, and, in the case of nuisance lighting, if the nuisance arises because of lights used to illuminate an outdoor relevant sports facility, that is to say a facility used for a relevant sport. The Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales, are given a power to designate by order which sports are relevant sports.

Pollution

Section 104 Contaminated Land: appeals against remediation notices

264. Section 104 amends the arrangements for appeals against remediation notices which are served under section 78E of Part 2A of the Environmental Protection Act 1990 (contaminated land).

265. The section amends section 78L to provide that the person on whom a remediation notice is served by a local authority in England may appeal to the Secretary of State, and in Wales to the National Assembly for Wales. This replaces the previous arrangement in section 78L under which magistrates' courts considered appeals where the notice had been served by the local authority, and the Secretary of State considered appeals where the notice had been served by the Environment Agency. The section will therefore provide a single appellate authority for remediation notices under Part 2A, whether served by the local authority or the Environment Agency.

266. Appeals to the Secretary of State and the National Assembly for Wales are heard by Inspectors appointed for the purpose. Cases may be decided by the Inspector, or "referred" for decision by the Secretary of State or the National Assembly for Wales on the basis of the Inspector's report

Section 105 Offences relating to pollution etc: penalties on conviction

267. Section 105 raises the penalties available to the courts for offenders found guilty of offences under paragraph 25 of Schedule 1 to the Pollution Prevention and Control Act 1999. These offences relate to, for example, contravention of the requirement for a permit to operate an installation or mobile plant, failure to comply with or to contravene a condition of a permit and failure to comply with the requirements of an enforcement notice or a suspension notice.

268. This section increases the maximum fines available on summary conviction from £20,000 to £50,000.

269. *Subsection (2)* raises the maximum sentence available on summary conviction from six to twelve months, in line with a change made by section 154(1) of the Criminal Justice Act 2003 (c.44).

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

PART 10: GENERAL

Section 106 Minor and consequential amendments

270. Section 106 and Schedule 4 provide for a number of minor and consequential amendments.

Section 107 Repeals

271. Section 107 and Schedule 5 provide for a number of repeals.

Section 108 Commencement

272. Section 108 makes detailed provision about commencement. Most provisions are to be brought into force by the Secretary of State in relation to England or the National Assembly for Wales in relation to Wales. Some provisions which relate to England only, or to matters which are not devolved, are to be brought into force by order by the Secretary of State alone. Others come into force two months after Royal Assent. Provisions not mentioned in section 108 come into force on Royal Assent (the provisions in question are all technical in nature).

SCHEDULES

Schedule 1 Application of the Noise Act 1996 to Licensed Premises etc

273. This Schedule is discussed in the Commentary section for section 82.

Schedule 2 The Commission for Architecture and the Built Environment

274. Schedule 2 makes further provision about the constitution of the Commission as well as other matters relating to its proceedings, accounts etc.

275. Schedule 2 also makes provision for the Commission to be added to provisions in other Acts, for example, the Commission's records are deemed public records by addition to Public Records Act 1958. It would also be usual to include a provision in this Act to add the Commission to the Parliamentary Commissioner Act 1967. However, at the time of this Act receiving Royal Assent, it was intended that this be dealt with shortly after in secondary legislation.

Schedule 3 Transfer of staff, property etc. from the old Commission

276. Schedule 3 provides for the transfer of staff, property, rights and liabilities from the old Commission to the new Commission. This ensures continuity between the new and old Commissions, for example, in relation to legal proceedings. In particular, Schedule 3 provides for the application of the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") to the transfer of rights and liabilities relating to employees.

Schedule 4 Minor and consequential amendments

277. Schedule 4 lists the minor and consequential amendments in this Act.

Schedule 5 Repeals

278. Schedule 5 lists all the repeals in this Act.

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

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament:

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	7 December 2004	Vol. 428 Cols 1041, 1042
Second Reading	10 January 2005	Vol. 429 Cols 40-134
Committee	18 January 2005 20 January 2005 25 January 2005 27 January 2005 1 February 2005	Hansard Standing Committee G
Report and Third Reading	21 February 2005	Vol. 431 Cols 39-123
Commons consideration of Lords amendments	6 April 2005	Vol. 432 Cols 1538-1542
<i>House of Lords</i>		
Introduction	22 February 2005	Vol. 669 Col 1100
Second Reading	22 March 2005	Vol. 671 Cols 179-213
Committee	6 April 2005	Vol. 671 Cols 785-795
Report	6 April 2005	Vol. 671 Cols 795
Third Reading	6 April 2005	Vol. 671 Cols 796

Royal Assent – 7 April 2005 House of Lords Hansard Vol. 671 Col 950

House of Commons Hansard Vol. 432 Col 1641

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