



Litter and Refuse

Guidance on Part 4 of the Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005

This guidance is part of a series on legislation & powers affected by the Clean Neighbourhoods and Environment Act 2005.

Guidance on the following topics is also available;

- Nuisance and Abandoned Vehicles
- Defacement Removal Notices
- Waste
- Dog Control Orders
- Noise
- Fixed Penalty Notices
- Abandoned Shopping and Luggage trolleys
- Statutory Nuisance from Insects and Artificial Light

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Overview

This document provides guidance on litter legislation in sections 86–98 of, and Schedule 3A to, the Environmental Protection Act 1990, as amended by the Clean Neighbourhoods and Environment Act 2005. A copy of these sections of the Act is shown at Annex C. For the purposes of sections 92A, 92B and 92C, on Litter Clearing Notices, this guidance is issued by the Secretary of State.

Legislation referred to in the text can be obtained from the website of the Office of Public Sector Information at: www.opsi.gov.uk/legislation/index.htm

1. Offence of leaving litter, prosecution and fixed penalties

(sections 87 & 88)



1.1 Under section 87 of the 1990 Act it is an offence to throw down, drop or otherwise deposit, and then leave, litter. Until an amendment to section 87 made by section 18 of the Clean Neighbourhoods and Environment Act 2005 came into force on 7th June 2005, the offence applied only to public open places, and also to 'relevant land' and 'relevant highways' that were not otherwise covered by this description (see guidance on section 89 (and 86) below for definitions). The offence, as amended, now applies to all places that are open to the air, including private land and land covered by water. This removes the previous anomaly whereby, for example, someone caught dropping litter on a footpath could be prosecuted, but if they threw it into a neighbouring private garden they could not.

1.2 A person found guilty of the litter offence may be fined up to level 4 on the standard scale (currently £2,500) in a magistrates' court.

Section 88 allows an authorised officer of a litter authority to issue fixed penalty notices as an alternative to prosecution.

Section 87 (as amended)

1.3 **Subsection (1)** states that a person is guilty of an offence if he throws down, drops or otherwise deposits, and then leaves, any litter in any place to which this section applies. It is no longer necessary for the litter to cause or contribute to the defacement of a place.

1.4 The 1990 Act does not provide a definition of litter, although the Courts have considered the definition to be wide. Subsection 98(5A) of the 1990 Act (introduced by section 27 of the Clean Neighbourhoods and Environment Act 2005), now makes it clear that the term specifically includes smoking-related litter such as cigarette ends, cigars and like products, and discarded chewing gum and discarded remains of other products designed for chewing, such as bubble gum.

1.5 In practice, litter is most commonly assumed to include materials, often associated with smoking, eating and drinking, that are discarded and left by members of the public otherwise than in proper receptacles; or are spilt during waste management operations. Local authorities will need to exercise a degree of judgement in deciding whether larger items and accumulations of discarded material constitute fly-tipping rather than litter – as a guideline, a single plastic sack of rubbish will usually fall outside the scope of section 87 and should be dealt with accordingly. Further advice on the appropriate use of penalties for litter and waste is given in the separate guidance available on fixed penalty notices.

1.6 **Subsection (2)** states that section 87 applies **‘to any place in the area of a principal litter authority which is open to the air.’** ‘Principal litter authority’ is defined in section 86(2) of the 1990 Act. Under section 72 of the Local Government Act 1972 the area of a local authority extends down to the low-water mark on the coast.

The term **‘open to the air’** is elaborated in section 86(13) of the 1990 Act, and further explanation is given at 2.4 of this guidance.

1.7 The effect of **subsection (3)** is that if a covered place is ‘open to the air’ by virtue of section 86(13) i.e. because it is open to the air on at least one side, then section 87 applies to it only if the public have access to it, with or without payment. It should be noted that the question of public access is no longer relevant for any other place that is ‘open to the air’.

1.8 **Subsection (4)** states that **‘it is immaterial for the purposes of this section whether the litter is deposited on land or in water’**. In law the term ‘land’ includes land covered by water so this section already applies to ponds, lakes, rivers etc., and to the sea down to the low water mark. This subsection has the effect of confirming that throwing down, dropping or depositing litter in water is an offence.

1.9 **Subsections (4A), (4B) and (4C)** set out exceptions to the offence.

1.10 **Subsection (4A)** retains the previous exception that no offence is committed if depositing litter is

'(a) authorised by law; or

(b) done by or with the consent of the owner, occupier or other person having control of the place where it is deposited'.

1.11 **Subsection (4B)** limits the ability of someone to consent under (4A) to the deposit of litter in a lake, pond or watercourse. Such consent can only be given by someone who owns or controls *all* the land surrounding a lake, pond or watercourse that they own or control, and *all* the land through which the water from the lake or pond or watercourse passes and the land, including water bodies, that the water discharges into, unless this is by means of a public sewer. This provision is intended to ensure that litter dropped into one body of water cannot be carried into another body of water under different ownership or control.

1.12 **Subsection (4C)** states that the terms **'lake or pond'**, **'watercourse'** and **'public sewer'** have the same meanings as in section 104 of the Water Resources Act 1991. Section 104 needs to be read together with section 221 (General Interpretation) of the same Act. Accordingly:

'lake or pond' includes a reservoir of any description. (s.104)

'watercourse' includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except mains and other pipes which –

(a) belong to the Environment Agency or a water undertaker; or

(b) are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises. (s.221)



['water undertaker' is to be construed in accordance with s.6 of the Water Industry Act 1991 (repealed with savings by the Environment Act 1995 (ss.17(2), 55, 120(1)–(3), Sch.22 para.129 and Sch.23 paras. 1 and 3); Interpretation Act 1978, s.5 and Sch.1):

'6(1) Subject to the following provisions of this Chapter, a company may be appointed

- (a) by the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director to be a water undertaker or sewage undertaker for any area in England or Wales;

6(5) A company shall not be appointed to be a water undertaker unless it is a limited company or a statutory water company...']

'public sewer' means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the Water Act 1989, section 179 of or Schedule 2 to the Water Industry Act 1991 or otherwise. (s.221)

1.13 **Subsection (5)** states that a person found guilty of the offence may be liable to up to a level 4 fine (currently £2,500) on summary conviction in a magistrates' court.

1.14 Under **subsection (6)** a local authority may take steps to advise the public of the penalties for a litter offence so as to promote the abatement of litter. By extending the offence of dropping litter, it is Government's intention to send out a clear message that the irresponsible disposal of litter anywhere is unacceptable. Local authorities have an important role to play in informing local residents and visitors of their responsibilities. Ideally, they should also ensure the public are aware of the authority's enforcement strategy, and who is policing the law in their area.

Section 88

Note: This section covers the basic principles of fixed penalty notices for litter and outlines amendments to the 1990 Act introduced by the Clean Neighbourhoods and Environment Act 2005. However, detailed information on their use is provided in the separate guidance

available on fixed penalty notices, and litter authorities, authorised officers, Police Community Support Officers (PCSOs) and persons accredited into Community Safety Accreditation Schemes are strongly advised to consult this guidance when using the fixed penalty notice provisions.

1.15 **Subsection (1)** enables an **'authorised officer of a litter authority'** to issue a fixed penalty notice to a person he believes has committed an offence under section 87.

1.16 The term **'litter authority'** is defined in **subsection (9)** and includes any principal litter authority other than a county council, except where the county council has been so-designated by the Secretary of State; the Broads Authority; and parish and community councils (National Park Authorities are also deemed to be litter authorities, under Schedule 9 of the Environment Act 1995).

1.17 The Clean Neighbourhoods and Environment Act 2005 makes an amendment extending the definition of **'authorised officer'** given in **subsection (10)**.

Under the original 1990 legislation it referred only to an officer of a litter authority i.e. an employee, authorised in writing for the purpose of issuing fixed penalty notices. Litter authorities can now enter into arrangements so as to enable 'any person' (or the employee of any such person) to give such notices.

Subsection (11) introduces a caveat for parish and community councils, enabling the Secretary of State to prescribe conditions that must be met by a person before a parish or community council can authorise him.

1.18 It should be noted that PCSOs and persons accredited into Community Safety Accreditation Schemes also have the power to issue section 88 notices under the Police Reform Act 2002:

- PCSOs: Section 38(6)(a) and Schedule 4, Part 1, Paragraph 1.
- Accredited Persons: Section 41(3) and Schedule 5, Paragraph 1.

1.19 **Subsection (2)** provides that where a person is given a fixed penalty notice no proceedings may be taken within 14 days of the notice being served, and the person cannot be convicted of the offence if payment of the fixed penalty is made within this time period.

1.20 **Subsections (3-6)** deal with the form and content of fixed penalty notices, and procedures for payment.

1.21 **Subsection (6A)**, introduced by the Clean Neighbourhoods and Environment Act 2005, enables a principal litter authority, other than a county council for an area where there is also a district council (subsection 6B), to specify the level of fixed penalty that will apply in its area. This is subject to regulations under section 97A that may set out the range within which this level must fall. If the local authority chooses not to set its own level, a standard default amount of £75 applies.

1.22 **Subsection (7)**, also introduced by the 2005 Act, enables a litter authority to offer a discount for early payment of a fixed penalty. Again, the Secretary of State may make regulations in connection with this power under section 97A.

1.23 **Subsection (8)** deals with evidence for the receipt of fixed penalty payments.

1.24 **Subsections (8A-8C)**, introduced by the 2005 Act, enable an authorised officer to require the name and address of a person on whom he proposes to give a fixed penalty notice. It is an offence to fail to provide these details, or to give a false or inaccurate name or address.

2. Duty to keep land and highways clear of litter and refuse

(section 89 incorporating section 86 definitions)



2.1 Section 89 imposes a duty on those bodies responsible for various descriptions of 'relevant land' and 'relevant highways' (defined in section 86) to ensure that these are, so far as is practicable, kept clear of litter and refuse, and in the case of highways, clean. It also imposes similar duties on the Secretary of State in respect of relevant highways and trunk roads which are special roads for which he is responsible.

2.2 Guidance on the extent of these duties, and how they can best be discharged, is contained in the statutory Code of Practice on Litter and Refuse. This document provides guidance on the bodies and types of land subject to these duties and may be viewed at: www.defra.gov.uk/environment/localenv/litter/code/index.htm

2.3 Subsection (1) states that the duty 'to ensure that the land is, so far as is practicable, kept clear of litter and refuse' applies to:

(a) each local authority, as respects any relevant highway for which it is responsible

Section 86(9) defines the term 'relevant highway'. 'A highway' is a relevant highway if it is 'a highway maintainable at the public expense' and is not a 'trunk road' that is a 'special road' (all the terms are defined in the Highways Act 1980). This subsection also lists the local authorities responsible for relevant highways for the purposes of Part 4 of the Environmental Protection Act 1990. In England these comprise:

- District councils
- London borough councils
- The Common Council of the City of London
- The Council of the Isles of Scilly.

Section 86(11) enables the Secretary of State to transfer responsibility for the cleanliness of specific relevant highways from the local authority to the appropriate highway authority or roads authority. This has been exercised on four occasions, so as to transfer responsibility for the cleanliness of a number of trunk roads to the Secretary of State¹.

In London, the Greater London Authority Act 1999 allows for roads to be specified as GLA roads by the Secretary of State. Transport for London is the highway authority and traffic authority for these roads, but responsibilities under section 89 remain with the London Boroughs, subject to any transfer taking place under section 86(11).

(b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway for which he is responsible

In practice, the responsibilities of the Secretary of State are exercised by the Highways Agency. The Code of Practice on Litter and Refuse includes standards for special roads as well as for relevant land and relevant highways.

(c) each principal litter authority, as respects its relevant land

Section 86(2) states that in England the following are principal litter authorities

- (a) county councils
- (b) district councils
- (c) London borough councils
- (d) the Common Council of the City of London
- (e) the Council of the Isles of Scilly.

These responsibilities also fall on Unitary Authorities within the terms of the Local Government Act 1972 and the statutory instruments under which they were created. The Secretary of State has a power to designate other local authorities as litter authorities and principal litter authorities; this power has not been used.

Section 86(4) defines 'relevant land' of a principal litter authority. Land falls within this category if it is open to the air (but see s.86(13)), is not a highway, is under the direct control of a principal litter authority and is accessible to the public with or without payment. Under s.86(8) the Secretary of State can designate types

of land that are not to be treated as relevant land; this power has been used to designate beaches below the high water mark².

The establishment of Business Improvement Districts (BID) under Part 4 of the Local Government Act 2003 and Business Improvement Districts (England) Regulations 2004 does not remove the responsibilities of the principal litter authority to provide baseline street cleansing. The purpose of a BID is to establish additional services to those already provided by the local authority.

(d) the appropriate Crown authority, as respects its relevant Crown land

Section 86(5) defines 'Crown land'. Crown land is 'relevant Crown land' if it is open to the air (but see s.86(13)), is not a highway, and is accessible to the public with or without payment. Under s.86(8) the Secretary of State can designate types of land that are not to be treated as

relevant land; this power has been used to designate beaches below the high water mark².

Section 86(5) also defines the 'appropriate Crown authority'.

(e) each designated statutory undertaker, as respects its relevant land

Section 86(6) defines 'relevant land' of a designated statutory undertaker. 'Statutory undertaker' is defined in section 98(6) and designated statutory undertakers are listed in an order³ made by the Secretary of State under section 86(6).

In summary they comprise rail and tram operators (including London Underground, Metro and light rail), anyone authorised to carry out road transport operations (other than taxi and hire car operators), inland waterway and port operators and airport operators.

¹Highway Litter Clearance and Cleaning (Transfer of Duties) Order 1991, SI 1997/337; Highway Litter Clearance and Cleaning (Transfer of Responsibility) Order 1997, SI 1997/2960; Highway Litter Clearance and Cleaning (Transfer of Responsibility) Order 1998, SI 1998/467; Highway Litter Clearance and Cleaning (Transfer of Responsibility) (A13 Trunk Road) Order 2000, SI 2000/1508.

²The Litter (Relevant Land of Principal Litter Authorities and Relevant Crown Land) Order 1991 (S.I. 1991/476).

³The Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991 (SI 1991/1043) (as amended).

Utility companies do not fall within this definition.

Land is relevant land of a designated statutory undertaker if it is under the direct control of a designated statutory undertaker and is land to which the public has access with or without payment. However, the Secretary of State may, under s.86(6), prescribe as relevant land, land to which the public does not have access, and, under s.86(8), designate types of land, which are not to be treated as relevant land of designated statutory undertakers. These powers have been used:

- To prescribe as relevant land, operational land⁴ within 100 metres of a railway station platform (provided the public has access to the platform) and other

operational railway land in an urban area,⁵ other than depots, goods yards and enclosed areas where plant or machinery is kept;

- To designate as land not to be treated as relevant land (under subsection (8));
 - land that is not operational land;
 - land that is used solely for the provision of freight services;
 - land beside an unpaved towpath or beside a paved towpath where the paving extends for less than 1km; and
 - beaches below the high water mark.

(f) the governing body of each designated educational institution, as respects its relevant land

⁴'operational land' means –

- (a) in relation to any person authorised by any enactment to carry on any railway or light railway undertaking, land required or used for the operation of rail or light rail services,
- (aa) in relation to any operator of a relevant railway asset, land required or used for the operation of that asset,
- (b) in relation to any other land designated statutory undertaker –
 - (i) land which is used for the purpose of carrying on their undertaking; and
 - (ii) land in which an interest is held for that purpose, but does not include land which, in respect of its nature and situation, is comparable rather with land in general; than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.

(The Litter (Statutory Undertakers)(Designation and Relevant Land) Order 1991 (SI 1991/1043)(as amended)).

Section 86(7) defines 'relevant land' of a designated education institution. 'Educational institution' is defined in section 98(2), and all the institutions listed there have been designated by an order made under section 86(7).⁶ Land is relevant land of a designated educational institution if it is open to air (but see s.86(13)), and is under the direct control of the institution in question. Under s.86(8) the Secretary of State may designate types of land of designated educational institutions that are not to be treated as their relevant land; this power has not been used in relation to designated educational institutions.

2.4 There are two further provisions in section 86 which are relevant to the duty in subsection 1.

- **Section 86(13)** defines the term 'open to the air'. It states that a place shall be treated as 'open to the air' if it is covered, provided that it is open to the air on at least one side. It is intended that this should apply to any covered place with a significant, permanent opening on at least one side, such as a bus shelter, railway platform or garage forecourt that remains open to the air at all times.



⁵Land is in an urban area if it is surrounded by, or adjoins for continuous distance of not less than one kilometre, built-up sites (other than sites used for horticultural or agricultural purposes) on which there are permanent structures, and –

- (a) for the purpose of determining whether any distance is continuous, any gap between built-up sites of 50 metres or less shall be disregarded;
- (b) highways, navigable rivers and operational land which is not relevant land –
 - (i) shall not be treated as built-up sites for the purposes of determining whether or not land is in an urban area;
 - (ii) shall be ignored for the purposes of determining whether or not land adjoins built-up sites.

(The Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991 (SI 1991/1043) (as amended)).

⁶The Litter (Designated Educational Institutions) Order 1991 (S.I. 1991/561).

- **Section 86(14)** enables the Secretary of State to apply the provisions of Part IV of the Act which apply to refuse (but not to litter) to any description of animal droppings. The Litter (Animal Droppings) Order 1991 (S.I. 1991/961) applies these provisions to dog faeces on land of various descriptions⁷. This means that the duty to keep relevant land, so far as is practicable, clear of refuse applies to dog faeces on the types of land designated.
 - 2.5 **Subsection (2)** (of section 98) places a duty on local authorities and the Secretary of State to ensure that relevant highways and trunk roads which are special roads are, so far as is practicable, kept clean.
 - 2.6 **Subsection (3)** states that regard must be paid to the character of relevant land and highways, how they are used and what is practicable in the circumstances, in deciding what standard of cleansing will comply with the duties in subsections (1) and (2). Detailed guidance on this provision is contained in the Code of Practice on Litter and Refuse.

⁷The relevant part of the Order states: The provisions of Part IV of the Environmental Protection Act 1990 which apply to refuse shall apply to dog faeces on land of the following descriptions which is not heath or woodland or used for the grazing of animals:

- any public walk or pleasure ground;
- any land, whether enclosed or not, on which there are no buildings or of which no more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for the purposes of recreation;
- any part of the seashore (that is to say every cliff, bank, barrier, dune, beach, flat or other land adjacent to and above the place to which the tide flows at mean high water springs) which is –
 - frequently used by large numbers of people, and
 - managed by the person having direct control of it as a tourist resort or recreational facility;
- any esplanade or promenade which is above the place to which the tide flows at mean high water springs;
- any land not forming part of the highway, or, in Scotland, a public road, which is open to the air, which the public are permitted to use on foot only, and which provides access to retail premises;
- a trunk road picnic area provided by the Minister under section 112 of the Highways Act 1980 or, in Scotland, by the Secretary of State under section 55 of the Roads (Scotland) Act 1984;
- a picnic site provided by a local planning authority under section 10(2) of the Countryside Act 1968 or, in Scotland, a picnic place provided by an islands or district council or a general or district planning authority under section 2(2)(a)(i) of the Local Government (Development and Finance) (Scotland) Act 1964;
- land (whether above or below ground and whether or not consisting of or including buildings) forming or used in connection with off-street parking places provided in accordance with section 32 of the Road Traffic Regulation Act 1984.

2.7 **Subsection (4)** gives the Secretary of State a power to extend the duty to keep relevant highways clear of litter and refuse and clean to matter that would not normally be regarded as litter or refuse. This power has not been used.

2.8 **Subsections (5) and (6)** cover the exercise by local authorities of their responsibilities to clear and clean highways. They must put in place traffic signs and barriers to warn approaching traffic, and comply with any directions given to them by the appropriate highway authority about these and about the timing of their cleaning operations. The local authority may also apply to the highway or roads authority for a traffic regulation order under the Road Traffic Regulation Act 1984 to restrict traffic for the purpose of exercising its duty.

2.9 **Subsections (7) to (13)** deal with the Code of Practice on Litter and Refuse.

2.10 Under **subsection (7)** the Secretary of State is required to issue a code of practice **'for the purpose of providing practical guidance on the discharge of the duties imposed by subsections (1) and (2)'**, and **subsection (10)** requires anyone subject to such a duty to **'have regard to the code of practice... in discharging that duty'**. The other subsections cover the procedures for making and amending the Code of Practice.

2.11 The Code of Practice on Litter and Refuse has recently been revised, and the revised version is made available at www.defra.gov.uk/environment/localenv/litter/code/index.htm. Copies are available from Defra publications (Tel: 08459 556000).

3. Making a complaint about litter and refuse – Litter Abatement Orders

(section 91)

3.1 This section provides for **individuals and legal persons to take action, via the magistrates' courts, against those not complying with the duty to keep land clear of litter or refuse, or highways clean.** If the magistrates' court concludes that the complaint is well founded, it may issue a Litter Abatement Order requiring the person complained against to clear or clean the land. Failure to comply with a Litter Abatement Order is a criminal offence, punishable by a maximum fine at level 4 (currently £2,500), together with a further fine of one-twentieth of that amount (£125) a day for each day that the offence continues after conviction.

3.2 Persons with a complaint about litter should always bring the matter to the attention of the duty body first, before taking action under section 91. (Local authorities and other duty bodies should inform the public about procedures for making a formal

complaint, and the right to seek redress in the courts, if the litter duty is not met.)

3.3 Principal litter authorities are not able to take action under this section (**subsection(3)**).

3.4 Anyone '**aggrieved by the defacement, by litter or refuse**', of any of the types of relevant land may complain to a magistrates' court (for guidance on these types of land, see the guidance on section 89) (**subsection (1)**).

3.5 Anyone '**aggrieved by the want of cleanliness**' of any relevant highway or special road may take similar action (**subsection (2)**).

3.6 Proceedings under s.91 must be taken against the person who has the duty to keep the land in question clear of litter or refuse, or the highway clean (**subsection (4)**). Under **subsection (5)**, five days written notice must be given to that person, with details of the complaint, before proceedings are instituted.

3.7 If the magistrates' court is satisfied that the complaint is justified, it can make a Litter Abatement Order **'requiring the defendant to clear the litter or refuse away or, as the case may be, clean the highway within a time specified in the order' (subsection(6))**. The period for compliance is for the court to decide; there is no minimum period in the legislation.

3.8 Anyone who, without reasonable excuse, fails to comply with a Litter Abatement Order commits an offence **(subsection (9))**.

3.9 In proceedings on a complaint, or for breach of a Litter Abatement Order, it is a defence for the defendant to prove that he has complied with his statutory duty under s.89(1) and (2) **(subsections (7) and (10))**. **Subsection(11)** states that the Code of Practice on Litter and Refuse issued under s.89(7) is admissible as evidence, and where relevant must be taken into account. The standards set out in the Code of Practice are therefore likely to be crucial in determining, in the first place whether a defendant is

complying with his statutory duty, and if the Court considers he is not, and issues a Litter Abatement Order, whether the standard of cleaning is sufficient to comply with the order.

3.10 If the magistrates' court is satisfied that a complaint is justified, for the reasons set out in **subsection(12)**, it must require the defendant to pay the reasonable costs incurred by the complainant in making the complaint and bringing the proceedings. It is not necessary for a Litter Abatement Order to be issued; if a defendant is able to show the Court that the land in question has been cleared prior to the proceedings, the Court will not make an order, but if it is satisfied that the original complaint was justified it can order the complainant's costs to be paid.



4. Enforcing the requirement for duty bodies to keep land clear of litter and refuse – Litter Abatement Notices

(section 92)

4.1 Section 92 of the Environmental Protection Act 1990 enables **authorities to take action where a duty body is failing to keep its relevant land clear of litter and refuse**. The power to issue a Litter Abatement Notice is available to principal litter authorities, other than county councils or joint boards, and may be used where any relevant Crown land, or land of a designated statutory undertaker, or designated educational institution is defaced by litter or refuse, or the defacement is likely to recur. Definitions of these types of 'relevant land' are given in section 86(5), (6) and (7) of the 1990 Act.

4.2 A Litter Abatement Notice may specify either, or both, of the following **(subsection (2))**:

- A **requirement** for the litter or refuse to be cleared within a certain time. In specifying a time period, local authorities should take into consideration the timings and guidance provided in the Code of Practice on Litter and Refuse for the type of land and litter in question.
- A **prohibition** on permitting the land to become defaced by litter or refuse.

4.3 The notice must be served on the responsible duty body, namely the appropriate Crown authority, statutory undertaker or governing body of the educational institution. **Subsection (4)** provides a person on whom the notice has been served with a right of appeal against it to the magistrates' court.

4.4 It is an offence for someone 'without reasonable excuse' to fail to comply with the requirement or prohibition specified in the notice, punishable by a maximum fine at level 4 (currently £2,500), together with a further fine of one-twentieth of that amount (£125) a day for each day that the offence continues after conviction (**subsection (6)**).

4.5 In proceedings on an appeal against, or for breach of, a Litter Abatement Notice, it is a defence for the defendant to prove that he has complied with his statutory duty under s.89(1) (**subsections (5) and (7) of section 92**). **Subsection(8)** states that the Code of Practice on Litter and Refuse is admissible as evidence, and where relevant must be taken into account. The standards set out in the Code of Practice are therefore likely to be crucial in determining, in the first place, whether a defendant is complying with his statutory duty, and secondly, whether the standard of cleaning is sufficient to comply with the notice.

4.6 Local authorities also have the power, if a person fails to comply with the notice, to enter the land, clear it of

litter and refuse, and recover the cost of doing so (**subsection (9)**). Local authorities are only permitted to reclaim the actual costs incurred in carrying out the clearance, and may not be able to reclaim full costs if the person shows that any of the expenditure was unnecessary. Civil proceedings for debt recovery may be brought by the local authority against the person if he fails to pay. Local authorities may not exercise the power in subsection (9) in respect of Crown land which is occupied for naval, military or air force purposes (**subsections (10) and (11)**). Further to subsection (10), **Subsection (12)** allows the Secretary of State to specify, by order, any relevant land of a statutory undertaker to which subsection (9) should not apply. This power has not been exercised.

4.7 See section 10 of this guidance for information regarding entry onto land and exclusion of liability.

4.8 A suggested model form for Litter Abatement Notices is provided at Annex B. Local authorities may wish to use this as a guide when issuing notices under section 92.

5. Power to require the clearance of litter from other land areas – Litter Clearing Notices

(sections 92 A-C)



Note: Section 92A(7) requires principal litter authorities to have regard to any guidance issued by the Secretary of State in discharging their functions in relation to Litter Clearing Notices.

5.1 Litter Clearing Notices enable principal litter authorities to require the occupier (or if the land is unoccupied, the owner) of land which is defaced by litter or refuse to clear it, and, where appropriate, take steps to prevent it from becoming heavily defaced again. Neglected areas of land can attract large amounts of litter, which may be carried into other areas and result in further antisocial behaviour. Sections 92A–92C, which are inserted into the Environmental Protection Act 1990 by section 20 of the Clean Neighbourhoods and Environment Act 2005, enable this problem to be dealt with.

5.2 Litter Clearing Notices replace the previous system of Litter Control Areas, enforced through Litter Abatement

Notices. Section 90 and all other references to Litter Control Areas in the 1990 Act have now been repealed.

5.3 The main features of the new system are:

- Litter Clearing Notices can be served on all types of land, private as well as public, other than those listed in section 92A(11);
- A Litter Clearing Notice can be served without prior designation of a Litter Control Area, and it is an offence not to comply with a Litter Clearing Notice;
- Fixed penalty notices may be issued as an alternative to prosecution;
- Litter Clearing Notices may specify the standard to which land must be cleared;
- If land is not cleared, or is not cleared satisfactorily, the principal litter authority can enter the land, clear it itself and recover the costs of doing so.

General principles

Working in partnership

5.4 Wherever possible, principal litter authorities should work in partnership with landowners and occupiers to resolve problems caused by heavily littered land. Before issuing a Litter Clearing Notice, an authority should try to persuade the occupier, or, if there is no occupier, the owner, to clear the land. Only if he fails to do so should a Litter Clearing Notice be issued. A notice should only be served on an owner if there is no occupier. If, however, reasonable efforts to contact the occupier or owner are unsuccessful, or previous experience demonstrates that efforts to persuade him to take action are likely to be ineffective, a Litter Clearing Notice can still be issued.

5.5 In issuing a Litter Clearing Notice principal litter authorities should consider the role they can play in helping to address the causes of the litter problem, particularly in specifying steps to be taken to prevent future defacement, for example, the ability to serve a fixed penalty notice on the person(s) responsible for the litter or to seek a

prosecution in the magistrates' court. It may be appropriate to provide more concentrated enforcement activity around the site and to monitor closely any incidents of re-offending. Given the close link between environmental degradation and further acts of anti-social behaviour the authority should work with the occupier or landowner to tackle other local environmental quality issues that may affect the condition of the land, such as abandoned vehicles or graffiti. This is particularly the case where the litter may not be the fault of the occupier, including cases in which the occupier is not physically capable of dealing with the problem. A Litter Clearing Notice should not be used if it appears that the problem has resulted from an accumulation of litter on adjacent local authority land that has not been cleared.

Litter Clearing Notices and fly-tipping

5.6 Litter Clearing Notices are intended to be used to deal with accumulations of litter that reduce the quality of the local environment within a neighbourhood; they

should not be used to deal with the illegal deposit of waste i.e. fly-tipping. Section 59 of the Environmental Protection Act 1990, (as amended by section 50 of the Clean Neighbourhoods and Environment Act 2005), provides the proper powers for dealing with the illegal deposit of waste, together with safeguards for occupiers and landowners who are the victims of fly-tipping.

5.7 Litter Clearing Notices are not a suitable tool where the problem relates to hazardous waste, industrial / commercial dumping or other incidents of illegal waste-tipping that are the main source of degradation in an area. However, there will be occasions when heavily littered areas of land attract low-level fly-tipping or refuse, for example, bin bags containing waste and odd pieces of furniture. In these cases a Litter Clearing Notice remains appropriate. The key test is whether the principal cause of the problem is an accumulation of litter or refuse over time as opposed to fly-tipping incidents.

Detailed guidance

Section 92A

5.8 **Subsection (1)** empowers a principal litter authority to serve a Litter Clearing Notice **'in relation to any land in its area which is open to the air'**.

Particular points to note are:

- Under subsection (10) a county council can only make use of this power in an area for which there is no district council;
- The power relates to all types of land, other than those excluded by virtue of subsection (11) – see paragraph 5.12 below, it therefore applies to private land as well as land that is accessible to the public;
- It applies to any land which is 'open to the air'. Section 86(13) provides that covered land is to be regarded as open to the air so long as it remains open to the air on at least one side. However, under subsection (11)(f), Litter Clearing Notices cannot be served in respect of land which is covered but open to the air on at least one side (and so regarded as 'open to the air') if the public do not have access to it, with or without payment.



5.9 Subsection (2) Before a notice can be served, a principal litter authority has to be satisfied that the land in question ‘is defaced by litter or refuse so as to be detrimental to the amenity of the locality’.

5.10 A Litter Clearing Notice can only be served if the land is defaced by litter and refuse and this is detrimental to the amenity of the area. Defacement is a matter of fact, but the impact of defacement on the amenity of the area will depend on a number of factors. ‘Amenity’ is a broad concept and not formally defined in the legislation or procedural guidance, i.e. it is a matter of fact and degree as well as common sense. Each case will be different and what would not be considered amenity in one part of a local authority’s area might well be considered so in another. Local authorities will therefore need to consider the condition of the site, the impact on the surrounding area and the scope of their powers in tackling the problem before they decide to issue a notice. However, Litter Clearing Notices should not be used to require the routine

clearing of small amounts of litter on the grounds that the land in question has a particularly high amenity value.

5.11 **Subsections (3) – (10)** deal with the requirements imposed by Litter Clearing Notices and with their service:

- The basic requirement of a Litter Clearing Notice is to clear the land in question of litter and refuse (ss(3)(a)). Ss(5)(b) enables a Litter Clearing Notice to specify standards of compliance, and land should be regarded as cleared of litter and refuse if these standards are met. Guidance on appropriate standards of compliance is contained in the Code of Practice on Litter and Refuse and Annex A explains how these should be applied in relation to Litter Clearing Notices.
- If a principal litter authority is satisfied that land on which a Litter Clearing Notice is being served is likely to become defaced by litter or refuse again, the Litter Clearing Notice can require reasonable steps to be taken to prevent future defacement of the land (subsection(3)(b)).

For example, such steps could include:

- requiring the occupier or owner to physically secure the land, taking into consideration ‘designing out crime’ principles;
- monitoring levels of litter;
- undertaking regular clearance;
- the provision of litter bins and appropriate containment of waste.

In determining what is ‘reasonable’ the local authority must take into account the individual circumstances of the case. Consideration must be given to such factors as cost, health and safety, and issues of practicability, in specifying the action that must be taken. For example, the size of land area affected may preclude the use of physical barriers to control the problem. Similarly, steps specified for a wildlife-sensitive area will need carefully to consider timings and access to the land. The local authority should also consider its own role in helping to prevent further littering from taking place (see ‘General Principles’).

- A Litter Clearing Notice must be served in the first instance on the occupier of the land to which it relates or, if the land is not occupied, on the owner (ss(4)).
- Under ss(9) if it is not possible ‘after reasonable enquiry’ to establish the name or proper address of the occupier or owner, a principal litter authority can serve a Litter Clearing Notice by posting it on the land. The period for compliance with the notice starts from the time it was posted. Details of the owner or occupier may be obtained by on-site enquires, use of section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and information from the Land Registry.
- A Litter Clearing Notice may (and ideally should) specify, in accordance with ss(5)(a) the deadline for compliance. Under ss(6) this must be at least 28 days, but may be longer.

- ss(8) allows the Secretary of State to specify the form and content of a Litter Clearing Notice. This power has not been exercised, however, Annex B provides a model form for Litter Clearing Notices, which may be used as a guide by local authorities.

5.12 **Subsection (11)** lists the types of land on which Litter Clearing Notices may not be served. These are:

(a) a highway maintainable at the public expense

This includes all such highways, including trunk roads which are special roads;

(b) land under the direct control of a principal litter authority

This includes all such land, and is not limited to 'relevant land' of a principal litter authority;

(c) Crown land

Again, this includes all Crown land, as defined in s.86(5), and is not limited to 'relevant Crown land';

(d) relevant land of a designated statutory undertaker

This is defined s.86(6) (see the guidance on section 89 above). Litter Clearing Notices can be served on other land controlled or occupied by a designated statutory undertaker;

(e) relevant land of a designated educational institution

This is defined in s.86(7) (see the guidance on section 89 above), but again, Litter Clearing Notices can be served on other land controlled or occupied by a designated educational institution;

(f) land which is covered (but 'open to the air' for the purposes of this Part by virtue of section 86 (13) above) and to which the public are not entitled or permitted to have access, with or without payment.

Section 92B

5.13 This section provides an appeal mechanism for a person on whom a Litter Clearing Notice is served. Such an appeal should be made to a magistrates' court within 21 days of the notice being served on the occupier/owner, or, where the occupier/owner is unknown, posted on the land in question.

5.14 **Subsection (3)** sets out the grounds on which an appeal may be made. In considering an appeal in relation to the effect on the amenity of the locality, regard should be had to the guidance on 'amenity' at subsection 92A(2) above, and, in relation to the action required being 'unfair or unduly onerous' to the reasonableness of the steps specified by the authority (see 92A(3–10) above).

5.15 The magistrates' court has the power to be able to quash the notice, make modifications to it, or dismiss the appeal.

Section 92C

5.16 This section makes it an offence to fail to comply with any requirement imposed by a Litter Clearing Notice, and a person found guilty of this offence may be fined up to level 4 on the standard scale (currently £2,500). A new section 94A allows local authorities to offer payment of a fixed penalty as an alternative to prosecution (please see section 7 of this guidance for more information).

5.17 Under section 92C a local authority, or any person authorised by it, may enter the land and clear it of the litter and refuse where a Litter Clearing Notice is not complied with. They may require the person on whom the notice was served to pay a reasonable charge in respect of the costs incurred. In determining a 'reasonable' charge, local authorities should ensure the costs are no more than is necessary to restore the land to the standard specified in the notice. Such costs may include officer time, use of cleaning equipment (unless of a specialised nature), and administration costs relating to the clearance itself. The legislation does not require a prosecution before the local authority enters the land to clear it. Where a prosecution has not been brought it is good practice formally to caution the occupier, or owner, before entering the land.

5.18 See section 10 of this guidance for information regarding entry onto land and exclusion of liability.



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6. Dealing with street litter outside premises

(sections 93 and 94)

6.1 Sections 93 and 94 of the Environmental Protection Act 1990 give local authorities the power to tackle street litter generated further to activities on adjacent premises. There is no restriction on the type of litter for which this may be used, but it is intended primarily to help deal with food and drink packaging and other litter caused by eating 'on the go', as well as litter from cash points and lottery tickets dropped outside shops and smoking-related litter, where it is discarded outside of a pub, club, restaurant or other premises that serves food or drink. The legislation enables local authorities to serve Street Litter Control Notices requiring businesses to clear up the litter and implement measures to prevent the land from becoming defaced again. This system has been simplified through amendments made by the Clean Neighbourhoods and Environment Act 2005 and extended so as to allow notices to be used where mobile operations such as burger vans are causing a problem.

General principles

6.2 As stressed in the guidance on Litter Clearing Notices, local authorities should work in partnership with others to resolve the problem of street litter and seek to remedy it, where possible, through joint working and good management practice. Such an approach is fostered by Defra's Voluntary Code of Practice for 'Reducing Litter Caused by Food on the Go', which sets out recommendations to help businesses, local authorities, and other public and private sector bodies work together. The Code provides a framework for businesses to identify how, when and where their worst litter problems arise and to work out ways of preventing and reducing these in partnership with other agencies. For example, solutions may include education about responsible disposal of litter, monitoring the cleanliness of the area and reducing packaging.

6.3 Copies of the code are available from Defra publications (Tel: 08459 556000) and may be viewed at: www.defra.gov.uk/environment/localenv/litter/pdf/fastfoodcop.pdf

6.4 It is recognised, however, that partnership working may not always be achievable or effective. In such circumstances, Street Litter Control Notices provide an enforcement mechanism for local authorities to place responsibility onto owners and businesses that are contributing to the problem.

6.5 A Street Litter Control Notice is served on the occupier or (if the premises are unoccupied) the owner, so as to place an ongoing obligation on him to comply with the requirement(s) specified for that land. If the occupier or owner changes, a new notice must be issued in order for the requirement(s) to continue.

Detailed guidance

Section 93

6.6 Subsection (1) provides that a principal litter authority, other than a county council, may issue a Street Litter Control Notice.

6.7 Subsection (2) allows a notice to be served on the occupier of certain types of premises fronting a street, or, if the premises are unoccupied, on the owner. Under section 94(1)(a), the Street

Litter Control Notices Order 1991 (SI 1991/1324), as amended, prescribes the commercial and retail premises in respect of which a notice may be issued. These include:

- Premises used wholly or partly for the sale of food or drink for consumption off the premises, such as take-ways or fast food outlets.
- Premises used wholly or partly for the sale of food or drink for consumption on the premises, such as pubs, cafes, restaurants and clubs.
- Service stations.
- Recreational venues such as cinemas, theatres, sports facilities and pitches.
- Banks and building societies with automated teller machines.
- Betting shops.
- Premises selling lottery tickets.
- Premises outside which goods are displayed for sale on or adjacent to the street.

6.8 By virtue of a new subsection 93(3A) inserted by the Clean Neighbourhoods and Environment Act 2005, notices can also be served in relation to vehicles, stalls and other moveable structures used for commercial or retail activities on a street. Further, the Street Litter Control Notices (England)(Amendment) Order 2007 has amended the 1991 Order so that Street Litter Control Notices can now be used against premises that sell food or drink for consumption on the premises. This was brought in to provide a tool to tackle the problem of smoking-related litter, which might be caused where people, for example, go outside of a pub or a restaurant to smoke following the commencement of the smokefree legislation.

6.9 Notices must be issued in relation to the particular premises causing (or likely to cause) a litter problem. The source of the litter may be identified from packaging, labelling or by monitoring at the site. Where several premises are contributing to a litter problem in an area, for example, a row of shops, the

occupiers should be encouraged to work together and pool resources to keep the street outside clean and attractive to customers. If notices are required to achieve this, local authorities will need to ensure the actions specified for the different premises complement each other.

6.10 SI 1991/1324 also prescribes descriptions of the land and size of area to which the notice may apply. This can be land in the open air which is part of the premises; part of a street, other than the carriageway when it is open to vehicles; relevant land of a principal litter authority, or, land under the direct control of any other local authority. The land that is specified must be within 100 metres of the premises, except in the case of automated teller machines, in which case it must be within 10 metres. The maximum distances are just that and the requirements of any notice should only apply up to the distance where defacement is actually occurring (or is likely to occur), in all likelihood less than the maximum 100 metres.



6.11 Notices can be issued by the principal litter authority only if it is satisfied that litter or refuse is causing the 'recurrent defacement' of the street or open land adjacent to it, or the condition of open land on any part of the premises is of detriment to the amenity of the locality because of litter or refuse, or the premises is generating quantities of litter and refuse that are likely to lead to the defacement of the street or adjacent open land.

6.12 **Subsection (3)** sets out details of the required content of notices. Under (3)(c) the local authority must set out 'reasonable requirements' relating to the clearance of litter or refuse, such as the provision of litter bins or clearance at specified times or intervals (see also section 94(4)). It may not, however, require the clearance of litter or refuse from a carriageway, except when it is closed to vehicles.

6.13 In order to be 'reasonable' local authorities will need to consider the health and safety implications and cost effectiveness of any requirements they are proposing to make, as well as their own role in carrying out street cleansing (see 6.16 below). Regular cleansing may be required to prevent accumulations of litter from occurring, or may be necessary at certain times of the day to clear litter or refuse arising from periods of intense activity. In relation to fast food litter, the Voluntary Code of Practice for 'Reducing Litter Caused by Food on the Go' sets out recommended actions for different types of operator, including suggested timings / frequencies for monitoring litter and carrying out litter picks that may be used as a guide for specifying times or intervals in a Street Litter Control Notice.

6.14 Subsection (4) defines 'street' as 'a relevant highway, a relevant road or any other highway or road over which there is a right on foot'.

Section 94

6.15 The Clean Neighbourhoods and Environment Act 2005 has amended section 94(4)(b) so as to allow principal litter authorities to specify standards for the clearance of litter and refuse. Guidance on appropriate standards of compliance is contained in the Code of Practice on Litter and Refuse and Annex A explains how these should be applied in relation to Street Litter Control Notices.

6.16 Section 94(5) states that the authority must also take into account its own duties under section 89, and those of any other local authority, when imposing requirements for any area that is not part of the premises.

6.17 Subsection (6) sets out the procedure that must be followed by principal litter authorities when issuing a Street Litter Control Notice. They must inform the person on whom the notice is to be served and allow him a 21-day period in which to make any representations. These must be taken into account by the authority in deciding

on the content of the notice and its issue. Authorities should proceed with the notice as soon as is practicable once the 21-day period has expired.

6.18 Subsection (7) allows a person on whom a notice is served to appeal to the magistrates' court against the notice.

6.19 The Clean Neighbourhoods and Environment Act 2005 has substituted new subsections (8) and (9) so as to make it immediately an offence to fail to comply with the requirements specified in a Street Litter Control Notice.

A person found guilty of this offence may be given a fine of up to a maximum level 4 (currently £2,500). Fixed penalty notices may be issued as an alternative to prosecution – see section 7 for more details.

6.20 A suggested model form for Street Litter Control Notices is provided at Annex B. Local authorities may wish to use this as a guide when issuing notices under section 93.

7. Fixed penalty notices: Litter Clearing Notices and Street Litter Control Notices

(section 94A)

7.1 This section, inserted by the Clean Neighbourhoods and Environment Act 2005, enables an authorised officer of a litter authority to issue a fixed penalty notice where a person has committed an offence under section 92C(2) or 94(8), that is, failure to comply with the requirements of a Litter Clearing Notice or a Street Litter Control Notice. The fixed penalty should be issued to the person specified in the Litter Clearing Notice or Street Litter Control Notice.

7.2 These fixed penalties operate in a similar way to those under section 88 for the litter offence, however, there are several differences:

- ‘authorised officer’ in subsection (7) refers only to an officer of a principal litter authority who is authorised in writing for the purpose of giving fixed penalty notices under this section. It does not extend to officers outside the employment of the authority.

- If the local authority chooses not to set the level of the fixed penalty notice, the standard default amount is £100 under subsection (4).

- There is no offence of failing to provide a name and address or of giving false details (the officer will already know the name and address from issuing the original Litter Clearing Notice or Street Litter Control Notice).

7.3 Again, more detailed information on the application and use of fixed penalties is provided in the separate guidance available on fixed penalty notices.

8. Controlling the distribution of free literature

(section 94B & schedule 3A)

8.1 The distribution of free literature can blight public spaces if leaflets and other printed materials are subsequently dropped as litter. Section 94B of and Schedule 3A to, the Environmental Protection Act 1990, as inserted by the Clean Neighbourhoods and Environment Act 2005, give principal litter authorities powers to control such distributions. The regime allows local authorities to designate, by order, areas of their own land or highways, in which the distribution of free literature is permitted only with their consent, and anyone distributing free literature in such an area without consent commits an offence, punishable by a fine of up to level 4 (currently £2,500) on the standard scale or a fixed penalty notice. It is also an offence to commission or pay for the distribution of free printed matter in a designated area without the necessary consent. Land can only be designated if the principal litter authority is satisfied that the discarding of free literature is causing its defacement.

8.2 Distributors and organisers who commission them will need to be aware that they may need to obtain consent from more than one principal litter authority if the proposed distribution will take place in a number of areas or cut across authority boundaries. Principal litter authorities should make it clear to applicants that they can only give consent for land which they have designated, and should advise applicants to check other authority designation orders and seek consent where necessary. It is recommended that any individual guidance prepared by principal litter authorities on Schedule 3A explains this, and includes name and contact details of the relevant departments of neighbouring authorities.

8.3 As with other provisions in Part 4 of the Environmental Protection Act 1990, principal litter authorities are encouraged to work with retailers and businesses to minimise the problems associated with the distribution of free literature before imposing restrictions.

For example, some advertising companies have codes of conduct to minimise the amount of free literature that is discarded and ends up accumulating as litter in the local environment. Principal litter authorities may wish to endorse these codes and encourage others to adopt them or establish a voluntary scheme with advertisers before seeking to designate an area. Detailed guidance on the use of the legislation, including the granting of consent and imposition of conditions is given below.

Offence of unauthorised distribution

8.4 **Paragraph 1** of Schedule 3A creates the offence of unauthorised distribution of free printed matter.

8.5 **Sub-paragraph (1)** states that for the offence to be committed:

- The land on which the matter is distributed must be designated under paragraph 2;
- The person distributing the matter must know that the land is designated.

8.6 To ensure that the second condition is met, principal litter authorities will need to ensure that they adequately publicise details of land in their area which has been designated. This should be undertaken by means of on-site signage wherever it is practicable to do so. Principal litter authorities should also consider publicising by other means, for example, websites, leaflets, local publications and direct contact with businesses and distributors in the area.

8.7 **Sub-paragraph (2)** states that an offence is committed if someone causes another person to distribute free printed matter in a designated area without consent. The person commissioning the actual distributor therefore also commits an offence. In this case there is no requirement for the person concerned to know that the land is designated; those organising the distribution of free printed matter are expected to inform themselves of the existence of designated areas. However, under **sub-paragraph (3)** someone organising such a distribution is not guilty if he can show that he took 'reasonable steps to ensure that the

distribution did not occur on any land designated under this Schedule'. To benefit from this defence, an organiser would need to be able to demonstrate that he had taken steps, through, for example, written instructions, to ensure that the distributors of the printed matter were aware of the location of any designated land and that they should not distribute the matter on that land.

8.8 Sub-paragraph (4) creates a specific exemption from the provisions of the Schedule where the distribution is for political, charitable or religious purposes, so as not to inhibit the right to freedom of expression and freedom of thought, conscience and religion enshrined in the European Convention of Human Rights and the Human Rights Act 1998. There is no definition of these terms in the legislation, and interpretation of them is a matter for the courts, and European case law has seen these terms interpreted widely. In all other cases, the legislation allows for justifiable controls. However, the decisions of local authorities to designate land and to give or refuse consent must still be compatible with

Article 10 of the European Convention of Human Rights.

8.9 Sub-paragraph (6) defines the term 'distribute' as covering the giving out of free printed matter, and offering it or making it available to the public. It therefore catches material that is given out by hand or by means of placing newspapers, leaflets etc. in a stand on designated land. Matter placed on or affixed to vehicles is included within the definition, but the offence does not extend to material put inside a building or letterbox. By virtue of **sub-paragraph (7)** the provisions do not extend to the distribution of printed matter inside a public service vehicle such as a bus, as defined in Part 1 of the Public Passenger Vehicles Act 1981. However, the provisions will still apply to material distributed to the public *from* a vehicle on to designated land, whether it is stationary or in motion.

Free newspapers

8.10 Free newspapers are captured by the provisions to the same extent as any other type of free printed matter such as leaflets, pamphlets and stickers. Whether or not their distribution is exempt under sub-paragraph (4) will depend on their content. Free newspapers posted through letter-boxes, placed inside buildings, or distributed inside a public service vehicle will not fall under the controls in accordance with sub-paragraphs (6) and (7). Promotional supplements and fliers contained within newspapers should not be regarded as 'free' if they are part of a paid-for package.

Designation

8.11 **Paragraph 2** authorises a principal litter authority (other than a county council in an area where there is a district council) to designate an area in which the distribution of free printed matter is to be controlled and sets out the procedures that are to be followed.

8.12 Under **sub-paragraph (2)** land that is designated must be either relevant land of the authority or all or part of any relevant highway for which the authority is responsible, or both. For definitions of 'relevant land' and 'relevant highway' see s.86 of the 1990 Act (in guidance on section 89 above). Restrictions cannot therefore be imposed in relation to private land or premises.

8.13 Under **sub-paragraph (3)** a principal litter authority can only designate land if it is satisfied that it is being defaced by the discarding of free printed matter which has been distributed there. As in section 92(1), whether or not land is 'defaced' is a matter of fact, but the impact of the defacement will depend on a number of factors, such as the condition of the site and impact on the surrounding area. It is therefore unlikely that a designation order for a whole local authority or city will be appropriate as designations will relate to a point source or sources from which the materials are being distributed and the area around it that is affected by litter.

Authorities are advised to gather evidence of the defacement, for example, by taking photos or carrying out litter surveys, in support of any proposal to designate.

8.14 **Sub-paragraphs (4) to (7)** set out the procedures for designation. These are summarised below:

Step 1: Notification of proposal to make an order

8.15 The authority must issue a notice setting out its proposal. This must be:

- published in at least one newspaper circulating in the locality; and
- posted directly on the land.

Principal litter authorities are also advised to publish the notice on the internet via their individual websites.

8.16 The notice must contain:

- details of the land that the principal litter authority proposes to designate. It may be useful for the notice to include a map showing the boundary of the area;

- the date that the proposal will come into force. This must be at least 28 days from the date the notice is issued;
- how and for how long objections to the proposal may be made. At least 14 days from the date of the notice must be allowed for objections.

Step 2: Consideration of any objections

8.17 Principal litter authorities are required to take account of all objections they receive. Proper consideration should be given to each objection, and if it is decided to reject it, the reasons should be recorded; this could be crucial if the decision to go ahead with a proposal and to reject objections to it is challenged legally. It is good practice to write to all objectors whose objections have been rejected explaining the reasons for the authority's decision.



Step 3: Notification of an order

8.18 If a principal litter authority decides to go ahead with an order, it must issue a notice announcing its decision. This must be:

- published in at least one newspaper circulating in the locality; and
- posted directly on the land.

Authorities are also advised to publish the notice on the internet via their individual websites.

8.19 **The notice must give the date that the order will come into force.** This must be at least 14 days from the date the notice is issued.

8.20 **Sub-paragraph 2(8)** allows a principal litter authority to revoke an order at any time. By sub-paragraph 2(9), notice of the revocation must be:

- published in at least one newspaper circulating in the locality; and
- posted directly on the land.

Authorities are also advised to publish the notice on the internet via their individual websites.

Consent and conditions

8.21 **Paragraph 3** sets out the rules for issuing consents to distribute free printed matter in an area subject to a designation order.

8.22 **Under sub-paragraph (1)** anyone wishing to distribute free literature in a designated area must apply to the principal litter authority for consent to do so. Consent may be given by the authority to the person applying or to any other person. The consent may be for named individuals or by description. An example of the latter would be to all the employees of a particular company. Where the applicant wishes to use a variety of distributors, such as independent contractors, self-employed distributors and their agents or employees, the authority should ensure the applicant is aware of their responsibilities for ensuring the consent is complied with, in granting authorisation. Authorities should agree a reasonable timescale for responding to applications, and applicants should be advised of this.

8.23 **Sub-paragraph (2)** allows the principal litter authority to place limitations on the consent:

- by reference to the material that may be distributed;
- by reference to a particular period, or particular times or dates;
- by reference to any part of the designated land;
- to a particular distribution.

Alternatively, a blanket consent may be given to the persons specified, allowing the distribution of any material in any part of the area at any time.

8.24 **Sub-paragraph (3)** states that the principal litter authority 'need not' give consent to the applicant if it considers that the proposed distribution would likely lead to defacement of the designated land. There is no requirement for the local authority to grant consent to an applicant, but at the same time the authority must be able to justify its refusal based on the likelihood of the distribution causing defacement of the local environment. Under sub-paragraph (4) the principal litter authority may also

refuse consent if the applicant has been convicted of an offence, or, has paid a fixed penalty notice for the distribution of free literature without consent in a designated area, within the five years preceding the date of the application.

8.25 **Sub-paragraph (5)** enables the principal litter authority to place conditions on the consent if it considers that these are necessary or desirable for protecting the designated land from defacement or for the effective operation and enforcement of the Schedule. The ability to impose conditions on the consent may be a mitigating factor where the authority would otherwise refuse to grant consent. For example, if the authority is concerned that a particular distribution is likely to cause defacement of the designated area it may place a requirement on the distributor to clear up any such material which is discarded there.

8.26 **Sub-paragraph (6)** enables a principal litter authority to require a person distributing printed matter in a designated area to provide written evidence of the consent, on demand, to an authorised officer. It is therefore implicit in the legislation that any consent granted under the Schedule should be given in writing.

8.27 Under **sub-paragraph (7)** a consent may be revoked entirely, or in part, at any time, if the person to whom the consent was granted fails to comply with the conditions imposed on him or is convicted of an offence under paragraph 1 or pays a fixed penalty under paragraph 7. Similarly, under sub-paragraph (8) any condition imposed in relation to the consent may be varied or revoked at any time by notice to that person.

8.28 As sub-paragraph (7) only refers to the person to whom the consent was given, if principal litter authorities are granting authorisation to others under the consent the conduct of those persons may be dealt with as a condition. The person receiving the consent would then be subject to this, any breach of which would render the consent revocable.

Fees

8.29 **Paragraph 4** authorises principal litter authorities to charge a fee for issuing a consent. The amount of this fee is for the authority to determine but it must not be more than is reasonable to cover the costs of operating and enforcing the Schedule 3A provisions in its area. For example, this may include: the initial survey of the area, administration of consents, notification procedures, and the monitoring and enforcement of restrictions. They may not include potential clean-up costs.

Appeals

8.30 The process for appeals by any person aggrieved by decisions in relation to a consent is outlined in **Paragraph 5**. Appeals may be made to the magistrates' court against a decision to refuse a consent, to impose any limitation or condition on a consent, or to revoke a consent.

Seizure of material

8.31 **Paragraph 6** deals with the seizure of printed matter being distributed in a designated area.

If a person is found to be distributing free literature in a designated area without consent, an authorised officer of the principal litter authority may seize all or any of the material. This may be reclaimed by the person purporting to be its owner on application to the magistrates' court. The court must order the return of the printed matter to the owner if it is not required for legal proceedings brought by the authority under this Schedule. If the material is not reclaimed, and the authority does not know the name and address of the person from whom it was received, it may be disposed of or destroyed at the conclusion of proceedings for an offence; at the end of the time period in which proceedings may be brought; or, on discontinuation of any proceedings that have been initiated. In all other cases, the material must be returned.

Fixed penalty notices

8.32 Fixed penalty notices may be issued as an alternative to prosecution for the offence of distributing free literature without consent under **paragraph 7**.

Local authorities may set the level of the fixed penalty, or, if they choose not to do so, a standard default amount of £75 applies. **Paragraph 8** applies the wider definition of 'authorised officer' to the Schedule, so that local authorities may make arrangements with other persons to issue fixed penalties in addition to their own employees.

8.33 More detailed information on the application and use of fixed penalties is provided in the separate guidance available on fixed penalty notices.

Repeals

8.34 Section 4 of the London Local Authorities Act 1994 and sections 21 and 22 of the City of Newcastle-upon-Tyne Act 2000 are repealed by the Clean Neighbourhoods and Environment Act 2005. These local Acts previously allowed for the control of free literature distribution in London and Newcastle but are no longer necessary now that similar powers have been introduced on a national basis.



9. Public registers

(section 95)

9.1 Section 95 places a duty on each principal litter authority other than a county council or a joint board to maintain a register containing copies of all Street Litter Control Notices and all designation orders made in relation to controls on the distribution of free literature under paragraph 2(1) of Schedule 3A to the Environmental Protection Act 1990.

9.2 Notices and orders must be kept in the register for so long as they are in force.

9.3 The local authority is required to make the register available for public inspection, at all reasonable times, free of charge. They must also provide facilities to allow copies of the documents to be taken on payment of a reasonable charge.

9.4 The register does not need to be kept in documentary form, and so may be held electronically.

10. Access to property: health, safety and liability issues

10.1 Local authorities have the power to enter land to clear it of litter or refuse under:

- i. Section 92(9) – failure of a duty body to comply with a Litter Abatement Notice.
- ii. Section 92C(3) – failure of a person on whom a Litter Clearing Notice has been served to comply with its requirements.

10.2 The safety of staff undertaking such litter clearance and of the general public is paramount. Local authorities should work with partners to ensure their health and safety obligations are met.

Land belonging to statutory undertakers

10.3 The clearance of litter and refuse from land belonging to statutory undertakers may require the carrying out of special safety procedures and the use of specialised equipment. Any work should therefore be co-ordinated with other activities in order to avoid excessive costs.

Accordingly, local authorities must consult with statutory undertakers as to what would be a reasonable period of time for compliance when serving the initial notice.

Access to railway land

10.4 In the case of railway land (including London Underground, Metro and light rail where the latter is separate from roads), local authorities must not under any circumstances enter nor purport to authorise entry by any person. Only the railway undertaker concerned is in a position to authorise entry by persons in possession of appropriate railway safety certification meeting the requirements of the Railway (Safety Case) Regulations 2000 (S.I. 2000/2688). A failure to comply with this instruction is likely to place the local authority concerned in breach of its own duties under the Health and Safety at Work, etc. etc Act 1974. The officer(s) of the authority authorising entry may in such circumstances also render themselves liable to prosecution in their personal capacity.



Access to ports and airports

10.5 Access to ports and airports is strictly controlled because of the risks to safety and security; in particular, access to the airside at commercial airports and access into Restricted Areas of ports is subject to stringent security checks.

10.6 All UK port facilities handling international traffic are now subject to the International Ship and Port Facility Security Code as enforced by The Ship and Port Facility (Security) Regulations 2004 (S.I. 2004/1495). This new international security framework implemented on 1 July 2004, requires port facilities to control access into any areas that been designated as Restricted Areas by the Department for Transport. Access control may include but is not limited to, staff and visitor pass systems and a documentation, person, baggage and vehicle search regime.

10.7 Additionally, ports and airports generally cover an extensive area and may have complex and heavily used traffic routes. In order to ensure that they do not stray into areas where they are endangered by heavy plant, contractors MUST be escorted to the place where they work. Contractors carrying out work at ports and airports should therefore contact the port authority or airport authority responsible for the site to arrange access before carrying out any work.

Exclusion of liability (Section 97B)

10.8 Section 97B of the Environmental Protection Act 1990 provides exclusion of liability (damages or otherwise) for persons entering land in connection with section 92(9), 92C(3) and also 92A(9) (serving a Litter Clearing Notice by posting it on the land), namely:

- the principal litter authority and any employee of the authority, and
- in relation to section 92C(3), any person authorised by the authority under that provision and any employer or any employee of that person.

10.9 Subsection (3) sets out exemptions to this exclusion, covering anything done or omitted to be done in bad faith, failure to exercise due care and attention and acts or omissions for which proceedings are brought under section 6(1) of the Human Rights Act 1998.



Annex A

Standards of compliance for Litter Clearing Notices and Street Litter Control Notices

The Code of Practice on Litter and Refuse sets out four cleanliness standards based on the methodology for street cleansing best value performance indicator BV199:

Grade A: No litter or refuse

Grade B: Predominately free of litter and refuse apart from some small items

Grade C: Widespread distribution of litter and / or refuse with minor accumulations

Grade D: Heavily affected by litter and / or refuse with significant accumulations

These standards may be applied to any site, using the following principles:

- Grade A means that no litter or refuse, in any shape or form, is present in the area.
- The presence of even one small item of litter or refuse downgrades the environment to a B.
- The presence of litter and / or refuse that is significant enough to form a few minor accumulations (grade C) or significant accumulations (grade D) is regarded as unacceptable.

The grading system is therefore also applicable to areas that are the subject of a Litter Clearing Notice or Street Litter Control Notice. The aim of the Code of Practice is to achieve good land management, preventing litter in one area from being blown or carried into another, and avoiding the downward spiral from poor local environmental quality to antisocial behaviour and more serious criminal activity.

A Litter Clearing Notice or Street Litter Control Notice can only be used where land is already defaced by litter and refuse, or, in the case of Street Litter Control Notices, quantities of litter and refuse are likely to lead to defacement. The cleanliness of the land will therefore have fallen to at least a Grade C.

The aim of these notices is to restore land to at least a grade B standard. However, in specifying standards of litter clearing, local authorities should bear in mind practicability and enforceability.

It is likely that issues of practicability will apply in particular to Litter Clearing Notices, and this is an important caveat in the code. In many cases, they will be used in relation to soft surfaces such as grass or other vegetation, which are more difficult to clear effectively. In comparison, Street Litter Control Notices will generally apply to hard surfaces. However, they will often be used in relation to land that is already covered by the section 89 duty, and local authorities are required to consider their own role in cleansing when issuing such a notice.

Local authorities need also to specify standards that can be enforced. It would be unrealistic, for example, to require clearing to grade A standard since a single piece of litter, which could be present through no fault of the subject of the order, would mean failure.

Annex B

Note: These forms can also be downloaded from www.defra.gov.uk/environment/localenv/index.htm

Model forms for litter notices

1 Litter Abatement Notice

ENVIRONMENTAL PROTECTION ACT 1990 SECTION 92(1)

The..... *(name of principal litter authority issuing notice)*, being satisfied as respects the relevant land described in paragraph 2

- i. that it is defaced by litter or refuse, or
- ii. that its defacement by litter or refuse is likely to recur.

(delete i. or ii. if inapplicable), hereby serves the following Notice:

1 This Notice is served on the following Crown authority/designated statutory undertaker/governing body of a designated educational institution (delete as appropriate), as the responsible body having a duty under section 89(1) of the Environmental Protection Act 1990 to keep its relevant land, so far as is practicable, clear of litter or refuse:

Name of responsible body:

.....

Address:

.....

and,

- i. Requires that the litter or refuse is cleared within *(specify time period for compliance, e.g. seven days)* from the date on which this notice is served.

and / or,

- ii. Prohibits the responsible body from permitting that land to become defaced by litter or refuse again.

(if appropriate, delete whichever of i. or ii. is not to apply)

2 The relevant land to which this notice applies is the land which

- i. is delineated and shown *(describe colouring or other method used to identify the land on the map)* on the map forming part of this Notice, and
- ii. is briefly described in the Schedule to this Notice.

3 An appeal against this notice may be made to a magistrates' court within 21 days from the date on which it is served. The court must allow the appeal if you can prove that the duty under section 89(1) has been complied with; the Code of Practice on Litter and Refuse (issued pursuant to section 89(7)) is admissible as evidence in respect of compliance with that duty.

4 If you fail without reasonable excuse to comply with the requirement and / or prohibition (delete as appropriate) in paragraph 1:

- you may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500), plus further fines of one-twentieth of that sum (currently £125) a day for each day that the offence continues after conviction.
- the local authority is entitled, in respect of land other than Crown land occupied for naval, military or air force purposes, or certain land of designated statutory undertakers, to enter your land, clear the litter, and charge you for the costs incurred.

SCHEDULE

(Description of relevant land)

DATE

2. Litter Clearing Notice

ENVIRONMENTAL PROTECTION ACT 1990 SECTION 92A(1)

The *(name of principal litter authority issuing notice)*, being satisfied that the land described in paragraph 2 of this Notice is defaced by litter or refuse so as to be detrimental to the amenity of the locality, hereby requires by way of this Notice that:

1

Name of occupier or owner:

.....

Address:

.....

i. Clears the land of litter and refuse so as to restore it to

.....

*(standard for clearance, e.g a grade B in accordance with the Code of Practice on Litter and Refuse) within
(time period for compliance, e.g 28 days) from the date on which this notice is served.*

ii. And in addition, (the
(name of principal litter authority)
 being satisfied that the land is likely
 to become defaced by litter or refuse
 again), takes the following steps to
 prevent the land from becoming
 so defaced:

*(specify steps, e.g. Carry out a fortnightly
 inspection of the site, and remove
 any litter.)*

(Delete ii above if not applicable).

2 The land in relation to which this
 Notice applies is that land in the area of
[name of principal litter authority] which –

- i. is delineated and shown *(describe
 colouring or other method used to
 identify the land on the map)* on the
 map forming part of this Notice, and
- ii. is briefly described in the Schedule
 to this Notice.

3 An appeal against this notice may be
 made to a magistrates' court within 21
 days from the date on which it is served,
 on the grounds that:

- there is a material defect or error in,
 or in connection with, this notice;

- this notice should have been served
 on another person;
- the land is not defaced by litter or
 refuse so as to be detrimental to the
 amenity of the locality; or
- the action required is unfair or
 unduly onerous.

4

If you fail without reasonable excuse
 to comply with the requirement(s) in
 paragraph 1:

- you may be prosecuted. If you are
 prosecuted and convicted the
 maximum penalty is a fine not
 exceeding level 4 on the standard
 scale (currently £2,500);
- you may, in the alternative, be given
 the opportunity of accepting in lieu
 of prosecution a fixed penalty, in the
 amount of either £100 or at a level
 set by the principal litter authority
 within a range of £75 to £110.
 (delete if not applicable)

In addition to the above:

- the local authority may enter your land, clear the litter or refuse, and charge you for the costs incurred.

SCHEDULE

(Description of land)

DATE

3. Street Litter Control Notice

**ENVIRONMENTAL PROTECTION ACT
1990 SECTION 93**

The *(name of principal litter authority issuing notice)* being satisfied that in respect of the premises named in paragraph 1 below:

(delete (a), (b), (c) below as appropriate)

(a) there is recurrent defacement by litter or refuse of the land described in paragraph 2, being part of the street or open land adjacent to the street which is in the vicinity of the premises, or

(b) the condition of any part of the premises described in paragraph 2 which is open land in the vicinity of the frontage is, and were this Notice not served is likely to continue to be,

detrimental to the amenities of the locality by reason of the presence of litter or refuse, or

(c) there is produced, as a result of the activities carried out on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street described in paragraph 2, which is in the vicinity of the premises,

hereby serves the following Notice:

1 This notice is served on *(name of occupier or owner)* in respect of the following premises:

Name of Premises:

.....

Address:

.....

And requires you to:

(specify appropriate requirements, e.g.

- i. Install a litter bin outside the premises and empty it regularly so as to ensure that the bin and its contents do not become a nuisance or give a reasonable ground for complaint.*

ii. *Clear the land of litter and refuse so as to restore it to..... (standard for clearance, e.g. a grade B in accordance with the Code of Practice on Litter and Refuse) within (time period for compliance, e.g. 7 days) from the date on which the notice is served.*

iii. *Clear all litter daily from the shop frontage to the edge of the pavement).*

2 The open land to which this Notice applies is the land which

- i. is delineated and shown (describe colouring or other method used to identify the land on the map) on the map forming part of this Notice, and
- ii. is briefly described in the Schedule to this Notice.

3 An appeal against this notice may be made to a magistrates' court within 21 days from the date on which it is served. The court must allow the appeal if you can prove that you have complied with the duty imposed upon you under section 89(1) Environmental Protection Act 1990 in respect of the land; the Code of Practice on Litter and Refuse issued pursuant to section 89(7) is admissible as

evidence in respect of compliance with that duty.

4 If you fail without reasonable excuse to comply with the requirement(s) in paragraph 1:

- you may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500);
- you may, in the alternative, be offered the opportunity of accepting a fixed penalty notice in lieu of prosecution, in the amount of either £100 or at a level set by the principal litter authority within a range of £75 to £110.
(delete if not applicable)

SCHEDULE

(Description of land)

To note: Street Litter Control Notices may only be issued in relation to land and premises prescribed under (currently) Statutory Instrument 1991/1324.

DATE

Annex C

Full text of sections 86–98 of, and Schedule 3A to, the Environmental Protection Act 1990 (as amended by the Clean Neighbourhoods and Environment Act 2005)

This Annex provides a reference point for Part 4 of the Environmental Protection Act 1990 as amended by the 2005 Act, however, for full and up-to-date text of UK legislation please visit the Office of Public Sector Information website at: www.opsi.gov.uk/legislation/index.htm. Section 99 and Schedule 4 are dealt with separately in the guidance on abandoned shopping and luggage trolleys.

Part IV

Litter etc

Provisions relating to litter

86 Preliminary

- (1) The following provisions have effect for the purposes of this Part.
- (2) In England and Wales the following are ‘principal litter authorities’-
 - a) a county council,
 - aa) a county borough council,
 - b) a district council,
 - c) a London borough council,
 - d) the Common Council of the City of London, and
 - e) the Council of the Isles of Scilly;but the Secretary of State may, by order, designate other descriptions of local authorities as litter authorities for the purposes of this Part; and any such authority shall also be a principal litter authority.
- (3) In Scotland the following are ‘principal litter authorities’:
 - a) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 and

c) a joint board.

(4) Subject to subsection (8) below, land is 'relevant land' of a principal litter authority if, not being relevant land falling within subsection (7) below, it is open to the air and is land (but not a highway or in Scotland a public road) which is under the direct control of such an authority to which the public are entitled or permitted to have access with or without payment.

(5) Land is 'Crown land' if it is land:

- a) occupied by the Crown Estate Commissioners as part of the Crown Estate,
- b) occupied by or for the purposes of a government department or for naval, military or air force purposes, or
- c) occupied or managed by any body acting on behalf of the Crown;

is 'relevant Crown land' if it is Crown land which is open to the air and is land (but not a highway or in Scotland a public road) to which the public are entitled or permitted to have access with

or without payment; and 'the appropriate Crown authority' for any Crown land is the Crown Estate Commissioners, the Minister in charge of the government department or the body which occupies or manages the land on the Crown's behalf, as the case may be.

(6) Subject to subsection (8) below, land is 'relevant land' of a designated statutory undertaker if it is land which is under the direct control of any statutory undertaker or statutory undertaker of any description which may be designated by the Secretary of State, by order, for the purposes of this Part, being land to which the public are entitled or permitted to have access with or without payment or, in such cases as may be prescribed in the designation order, land in relation to which the public have no such right or permission.

(7) Subject to subsection (8) below, land is 'relevant land' of a designated educational institution if it is open to the air and is land which is under the direct control of the governing body of or, in Scotland, of such body or of the

education authority responsible for the management of, any educational institution or educational institution of any description which may be designated by the Secretary of State, by order, for the purposes of this Part.

(8) The Secretary of State may, by order, designate descriptions of land which are not to be treated as relevant Crown land or as relevant land of principal litter authorities, of designated statutory undertakers or of designated educational institutions or of any description of any of them.

(9) Every highway maintainable at the public expense other than a trunk road which is a special road is a 'relevant highway' and the local authority which is, for the purposes of this Part, 'responsible' for so much of it as lies within its area is, subject to any order under subsection (11) below:

- a) in Greater London, the council of the London borough or the Common Council of the City of London;
- b) in England outside Greater London, the council of the district; and

- bb) in Wales, the council of the county or county borough;

- c) the Council of the Isles of Scilly.

(10) In Scotland, every public road other than a trunk road which is a special road is a 'relevant road' and the local authority which is, for the purposes of this Part, 'responsible' for so much of it as lies within their area is, subject to any order under subsection (11) below, the council constituted under section 2 of the Local Government etc (Scotland) Act 1994.

(11) The Secretary of State may, by order, as respects relevant highways or relevant roads, relevant highways or relevant roads of any class or any part of a relevant highway or relevant road specified in the order, transfer the responsibility for the discharge of the duties imposed by section 89 below from the local authority to the highway or roads authority; but he shall not make an order under this subsection unless-

- a) (except where he is the highway or roads authority) he is requested to do so by the highway or roads authority;
- b) he consults the local authority; and

c) it appears to him to be necessary or expedient to do so in order to prevent or minimise interference with the passage or with the safety of traffic along the highway or, in Scotland, road in question;

and where, by an order under this subsection, responsibility for the discharge of those duties is transferred, the authority to which the transfer is made is, for the purposes of this Part, 'responsible' for the highway, road or part specified in the order.

(13) A place on land shall be treated as 'open to the air' notwithstanding that it is covered if it is open to the air on at least one side.

(14) The Secretary of State may, by order, apply the provisions of this Part which apply to refuse to any description of animal droppings in all or any prescribed circumstances subject to such modifications as appear to him to be necessary.

(15) Any power under this section may be exercised differently as respects different areas, different descriptions of land or for different circumstances.

87 Offence of leaving litter

(1) A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it.

(2) This section applies to any place in the area of a principal litter authority which is open to the air, subject to subsection (3) below.

(3) This section does not apply to a place which is 'open to the air' for the purposes of this Part by virtue of section 86(13) above if the public does not have access to it, with or without payment.

(4) It is immaterial for the purposes of this section whether the litter is deposited on land or in water.

(4A) No offence is committed under subsection (1) above where the depositing of the litter is:

- a) authorised by law; or
- b) done by or with the consent of the owner, occupier or other person having control of the place where it is deposited.



(4B) A person may only give consent under subsection (4A)(b) above in relation to the depositing of litter in a lake or pond or watercourse if he is the owner, occupier or other person having control of:

- a) all the land adjoining that lake or pond or watercourse; and
- b) all the land through or into which water in that lake or pond or watercourse directly or indirectly discharges, otherwise than by means of a public sewer.

(4C) In subsection (4B) above, 'lake or pond', 'watercourse' and 'public sewer' have the same meanings as in section 104 of the Water Resources Act 1991.

(5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) A local authority, with a view to promoting the abatement of litter, may take such steps as the authority think appropriate for making the effect of subsection (5) above known to the public in their area.

(7) In any proceedings in Scotland for an offence under this section it shall be lawful to convict the accused on the evidence of one witness.

88 Fixed penalty notices for leaving litter

(1) Where on any occasion an authorised officer of a litter authority finds a person who he has reason to believe has on that occasion committed an offence under section 87 above in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a notice under this section in respect of an offence:

- a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
- b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state

- a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;
- b) the amount of the fixed penalty; and
- c) the person to whom and the address at which the fixed penalty may be paid;

and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(4) Where a letter is sent in accordance with subsection (3) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(5) The form of notices under this section shall be such as the Secretary of State may by order prescribe.

(6) The fixed penalty payable in pursuance of a notice under this section is payable to the litter authority whose authorised officer gave the notice.

(6A) The amount of a fixed penalty payable in pursuance of a notice under this section:

- a) is the amount specified by a principal litter authority in relation to its area (whether the penalty is payable to that or another authority), or
- b) if no amount is specified, is £75.

(6B) The reference in subsection (6A) above to a principal litter authority does not include an English county council for an area for which there is also a district council.

(7) The litter authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.

(8) In any proceedings a certificate which:

a) purports to be signed by or on behalf of

- i. in England and Wales, the chief finance officer of the litter authority; or
- ii. in Scotland, the proper officer for the litter authority in whose area the offence was committed; and

b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

shall be evidence of the facts stated.

(8A) If an authorised officer of a litter authority proposes to give a person a notice under this section, the officer may require the person to give him his name and address.

(8B) A person commits an offence if:

a) he fails to give his name and address when required to do so under subsection (8A) above, or

b) he gives a false or inaccurate name or address in response to a requirement under that subsection.

(8C) A person guilty of an offence under subsection (8B) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) For the purposes of this section the following are 'litter authorities':

a) any principal litter authority, other than an English county council...or a joint board;

b) any English county council...or joint board designated by the Secretary of State, by order, in relation to such area as is specified in the order (not being an area in a National Park);

c) ...

d) ...

e) the Broads Authority;

f) a parish or community council.

(10) In this section:

'authorised officer', in relation to a litter authority, means

- a) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under this section;
- b) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and
- c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices;

‘chief finance officer’, in relation to a litter authority, means the person having responsibility for the financial affairs of the authority;

‘proper officer’ means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration).

(11) The appropriate person may by regulations prescribe conditions to be satisfied by a person before a parish or community council may authorise him in writing for the purpose of giving notices under this section.

89 Duty to keep land and highways clear of litter etc.

(1) It shall be the duty of:

- a) each local authority, as respects any relevant highway or, in Scotland, relevant road for which it is responsible,
- b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway or relevant road for which he is responsible,
- c) each principal litter authority, as respects its relevant land,
- d) the appropriate Crown authority, as respects its relevant Crown land,
- e) each designated statutory undertaker, as respects its relevant land, and
- f) the governing body of each designated educational institution or in Scotland such body, as the case may be, the education authority responsible for the management of the institution, as respects its relevant land,

to ensure that the land is, so far as is practicable, kept clear of litter and refuse.

(2) Subject to subsection (6) below, it shall also be the duty of:

- a) each local authority, as respects any relevant highway or relevant road for which it is responsible,
- b) the Secretary of State, as respects any trunk road which is a special road and any relevant highway or relevant road for which he is responsible,

to ensure that the highway or road is, so far as is practicable, kept clean.

(3) In determining what standard is required, as respects any description of land, highway or road, for compliance with subsections (1) and (2) above, regard shall be had to the character and use of the land, highway or road as well as the measures which are practicable in the circumstances.

(4) Matter of any description prescribed by regulations made by the Secretary of State for the purposes of subsections (1)(a) and (2) above shall be litter or refuse to which the duties imposed by those subsections apply as respects relevant highways or relevant roads whether or not it would be litter or refuse apart from this subsection.

(5) It shall be the duty of a local authority, when discharging its duty under subsection (1)(a) or (2) above as respects any relevant highway or relevant road, to place and maintain on the highway or road such traffic signs and barriers as may be necessary for giving warning and preventing danger to traffic or for regulating it and afterwards to remove them as soon as they cease to be necessary for those purposes; but this subsection has effect subject to any directions given under subsection (6) below.

(6) In discharging its duty under subsection (1)(a) or (2) above to keep clear of litter and refuse or to clean any relevant highway or relevant road for which it is responsible, the local authority shall comply with any directions given to it by the highway or roads authority with respect to:

- a) the placing and maintenance of any traffic signs or barriers;
- b) the days or periods during which clearing or cleaning shall not be undertaken or undertaken to any extent specified in the direction;

and for the purpose of enabling it to discharge its duty under subsection (1)(a) or (2) above as respects any relevant highway or relevant road the local authority may apply to the highway authority or roads authority for that authority to exercise its powers under section 14(1) or (2) of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic).

(7) The Secretary of State shall prepare and issue a code of practice for the purpose of providing practical guidance on the discharge of the duties imposed by subsections (1) and (2) above.

(8) Different codes of practice may be prepared and issued under subsection (7) above for different areas.

(9) The Secretary of State may issue modifications of, or withdraw, a code issued under subsection (7) above; but where a code is withdrawn, he shall prepare and issue a new code under that subsection in substitution for it.

(10) Any person subject to any duty imposed by subsection (1) or (2) above shall have regard to the code of practice

in force under subsection (7) above in discharging that duty.

(11) A draft code prepared under subsection (7) above shall be laid before both Houses of Parliament and shall not be issued until after the end of the period of 40 days beginning with the day on which the code was so laid, or if the draft is laid on different days, the later of the two days.

(12) If, within the period mentioned in subsection (11) above, either House resolves that the code the draft of which was laid before it should not be issued, the Secretary of State shall not issue that code.

(13) No account shall be taken in reckoning any period of 40 days for the purposes of this section of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(14) In this section 'traffic sign' has the meaning given in section 64(1) of the Road Traffic Regulation Act 1984.

90 Litter Control Areas

[this section has been repealed by the Clean Neighbourhoods and Environment Act 2005]

91 Summary proceedings by persons aggrieved by litter

(1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter or refuse, of:

- a) any relevant highway;
- b) any trunk road which is a special road;
- c) any relevant land of a principal litter authority;
- d) any relevant Crown land;
- e) any relevant land of a designated statutory undertaker; or
- f) any relevant land of a designated educational institution.

(2) A magistrates' court may also act under this section on a complaint made by any person on the ground that he is aggrieved by the want of cleanliness of any relevant highway or any trunk road which is a special road.

(3) A principal litter authority shall not be treated as a person aggrieved for the purposes of proceedings under this section.

(4) Proceedings under this section shall be brought against the person who has the duty to keep the land clear under section 89(1) above or to keep the highway clean under section 89(2) above, as the case may be.

(5) Before instituting proceedings under this section against any person, the complainant shall give to the person not less than five days written notice of his intention to make the complaint and the notice shall specify the matter complained of.

(6) If the magistrates' court is satisfied that the highway or land in question is defaced by litter or refuse or, in the case of a highway, is wanting in cleanliness, the court may, subject to subsections (7) and (8) below, make an order ('a litter abatement order') requiring the defendant to clear the litter or refuse away or, as the case may be, clean the highway within a time specified in the order.

(7) The magistrates' court shall not make a litter abatement order if the defendant proves that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.

(8) The magistrates' court shall not make a litter abatement order where it appears that the matter complained of is the result of directions given to the local authority under section 89(6) above by the highway authority.

(9) A person who, without reasonable excuse, fails to comply with a litter abatement order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

(10) In any proceedings for an offence under subsection (9) above it shall be a defence for the defendant to prove that he has complied, as respects the highway or land in question, with his duty under section 89(1) and (2) above.

(11) A code of practice under section 89(7) shall be admissible in evidence in any proceedings under this section and if any provision of such a direction or code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(12) Where a magistrates' court is satisfied on the hearing of a complaint under this section:

a) that, when the complaint was made to it, the highway or land in question was defaced by litter or refuse or, as the case may be, was wanting in cleanliness, and

b) that there were reasonable grounds for bringing the complaint,

the court shall order the defendant to pay such reasonable sum to the complainant as the court may determine in respect of the expenses incurred by the complainant in bringing the complaint and the proceedings before the court.

(13) In the application of this section to Scotland:

- a) for any reference to a magistrates' court there shall be substituted a reference to sheriff;
- b) for any reference to a complaint there shall be substituted a reference to a summary application, and 'complainant' shall be construed accordingly;
- c) for any reference to the defendant there shall be substituted a reference to the person against whom the proceedings are taken;
- d) for any reference to a highway and relevant highway there shall be substituted a reference to a road and a relevant road; and
- e) for any reference to a highway there shall be substituted a reference to a roads authority,

and any person against whom proceedings are brought may appeal on a point of law to the Court of Session against the making of a litter abatement order.

92 Summary proceedings by litter authorities

(1) Where a principal litter authority other than an English county council... or a joint board are satisfied as respects:

- a) any relevant Crown land,
- b) any relevant land of a designated statutory undertaker, or
- c) any relevant land of a designated educational institution,

that it is defaced by litter or refuse or that the defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a 'litter abatement notice') imposing either the requirement or the prohibition specified in subsection (2) below.

(2) The requirement and prohibition referred to in subsection (1) above are as follows, namely:

- a) a requirement that the litter or refuse be cleared within a time specified in the notice;
- b) a prohibition on permitting the land to become defaced by litter or refuse.

(3) The litter abatement notice shall be served:

- a) as respects relevant Crown land, on the appropriate Crown authority;
- b) as respects relevant land of a designated statutory undertaker, on the undertaker;

as respects relevant land of a designated educational institution, on the governing body of the institution or in Scotland on such body or, as the case may be, on the education authority responsible for the management of the institution.

(4) The person served with the notice may appeal against the notice to a magistrates' court or, in Scotland, to the sheriff by way of summary application within the period of twenty-one days beginning with the date on which the notice was served.

(5) If, on any appeal under subsection (4) above, the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1) above, the court shall allow the appeal.

(6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

(7) In any proceedings for an offence under subsection (6) above it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1) above.

(8) A code of practice under section 89(7) above shall be admissible in evidence in any proceedings under this section and if any provision of such a code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10) below:

- a) enter on the land and clear the litter or refuse, and
- b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.

(10) Subsection (9) above does not apply in relation to any land to which subsection (11) or (12) below applies.

(11) This subsection applies to any relevant Crown land which is occupied for naval, military or air force purposes.

(12) This subsection applies to any relevant land of a statutory undertaker in relation to which the Secretary of State has specified, by order, that it is requisite or expedient that, in the national interest, subsection (9) above should not apply.

92A Litter clearing notices

(1) A principal litter authority may in accordance with this section serve a notice (a 'litter clearing notice') in relation to any land in its area which is open to the air.

(2) Before serving a litter clearing notice in relation to any land a principal litter authority must be satisfied that the land is defaced by litter or refuse so as to be detrimental to the amenity of the locality.

(3) A litter clearing notice is to require the person on whom it is served:

- a) to clear the land of the litter or refuse; and
- b) if the principal litter authority is satisfied that the land is likely to become defaced by litter and refuse again, to take reasonable steps to prevent it from becoming so defaced.

(4) A litter clearing notice must be served on:

- a) the occupier of the land to which it relates; or
- b) if the land is not occupied, the owner.

(5) A litter clearing notice imposing a requirement under subsection (3)(a) above may specify:

- a) a period within which the requirement must be complied with;
- b) standards of compliance.

(6) A period specified under subsection (5)(a) above may not be less than 28 days beginning with the day on which the notice is served.

(7) A principal litter authority must, in discharging its functions under this section, have regard to any guidance given to the authority by the appropriate person.

(8) The form and content of a litter clearing notice is to be such as the appropriate person may by order specify.

(9) Where a principal litter authority proposes to serve a litter clearing notice in respect of any land but is unable after reasonable enquiry to ascertain the name or proper address of the occupier of the land (or, if the land is unoccupied, the owner):

- a) the authority may post the notice on the land (and may enter any land to the extent reasonably necessary for that purpose), and
- b) the notice is to be treated as having been served upon the occupier (or, of the land is unoccupied, the owner) at the time the notice is posted.

(10) Subsection (1) above does not apply to an English county council for an area for which there is a district council.

(11) A litter clearing notice may not be served in relation to land of any of the following descriptions:

- a) a highway maintainable at the public expense;
- b) land under the direct control of a principal litter authority;
- c) Crown land;
- d) relevant land of a designated statutory undertaker;
- e) relevant land of a designated educational institution;

f) land which is covered (but 'open to the air' for the purposes of this Part by virtue of section 86(13) above) and to which the public are not entitled or permitted to have access, with or without payment.

92B Appeals against litter clearing notices

(1) A person on whom a litter clearing notice is served under section 92A above may appeal against it to a magistrates' court in accordance with the provisions of this section.

(2) An appeal under this section must be made within a period of 21 days beginning with the day on which the notice is served.

(3) The grounds on which an appeal under this section may be made are that:

- a) there is a material defect or error in, or in connection with, the notice;
- b) the notice should have been served on another person;
- c) the land is not defaced by litter or refuse so as to be detrimental to the amenity of the locality;

d) the action required is unfair or unduly onerous.

(4) A notice against which an appeal under this section is made is of no effect pending the final determination or withdrawal of the appeal.

(5) On the determination of an appeal under this section, the magistrates' court must:

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

92C Failure to comply with litter clearing notice

(1) This section applies where the person on whom a litter clearing notice is served under section 92A above fails without reasonable excuse to comply with any requirement imposed by the notice.

(2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) The principal litter authority which served the notice or any person authorised by the authority may enter the land to which the notice relates and clear it of litter and refuse.

(4) Where a principal litter authority exercises the power in subsection (3) above, it may require the person on whom the notice was served to pay a reasonable charge in respect of the exercise of the power.

(5) A principal litter authority may for the purposes of subsection (4) above impose charges by reference to land of particular descriptions or categories (including categories determined by reference to surface area).

93 Street litter control notices

(1) A principal litter authority other than an English county council... or a joint board may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices ('street litter control notices') imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94 below.

(2) If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94(1)(a) below and have a frontage on a street in their area, that:

- a) there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises, or
- b) the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the present of litter or refuse, or
- c) there is produced, as a result of the activities carried out on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises, the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.



(3) A notice shall, subject to section 94(2), (3) and (4) below:

- a) identify the premises and state the grounds under subsection (2) above on which it is issued;
- b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;
- c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances;

and, for the purposes of paragraph (b) above, an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

(3A) A vehicle or stall or other moveable structure which is used for one or more commercial or retail activities while parked or set at a particular place on or verging a street is to be treated for the purposes of this section and section 94 below as if it were premises situated at that place having a frontage on that street in the place where it is parked or set.

(3B) In subsection (3A) above, 'vehicle' means any vehicle intended or adapted for use on roads.

(4) In this section and section 94 below:

'notice' means a street litter control notice;

'open land' means land in the open air;

'the premises', in relation to a notice, means the premises in respect of which the notice is issued;

'specified area' means the area specified in the notice under subsection (3)(b) above; and

'street' means a relevant highway, a relevant road or any other highway or road over which there is a right of way on foot.

94 Street litter: supplementary provisions

(1) The Secretary of State may by order prescribe:

- a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;
- b) the descriptions of land which may be included in a specified area; and

c) the maximum area of land which may be included in a specified area;

and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) above for different cases or circumstances.

(2) The power to describe premises or land under subsection (1)(a) or (b) above includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.

(3) The land comprised in a specified area:

- a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b) above;
- b) shall not include any land which is not
 - i. part of the premises,
 - ii. part of a street,
 - iii. relevant land of a principal litter authority, or
 - iv. land under the direct control of any other local authority, and

c) shall not exceed any applicable maximum area prescribed under subsection (1)(c) above.

(4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require

- a) the provision or emptying of receptacles for litter or refuse;
- b) the doing within a period specified in the notice of any such thing as may be so specified (including the standards to which any such thing must be done); or
- c) the doing (while the notice remains in force) at such times or intervals, or within such periods, of any such things as may be so specified;

but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.

(5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.

(6) An authority proposing to serve a notice shall:

- a) inform the person on whom the notice is to be served;
- b) give him the opportunity to make representations about the notice within the period of twenty-one days beginning with the day on which he is so informed; and
- c) take any representations so made into account in making their decision.

(7) A person on whom a notice is served may appeal against the notice to a magistrates' court or, in Scotland, to the sheriff by way of summary application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.

(8) A person commits an offence if, without reasonable excuse, he fails to comply with a requirement imposed on him by a notice.

(9) A person guilty of an offence under subsection (8) above is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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

(1) This section applies where on any occasion it appears to an authorised officer of a principal litter authority that a person has committed an offence under section 92C(2) or 94(8) above in relation to a notice served by that authority.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority.

(3) Subsections (2) to (5) of section 88 above (fixed penalty notices for leaving litter) apply in relation to notices given under this section as they apply in relation to notices given under that section.

(4) The amount of a fixed penalty payable to a principal litter authority under this section is:

- a) the amount specified by the authority in relation to its area (and an authority may specify different amounts for the two different offences referred to in subsection (1) above); or
- b) if no amount is so specified, £100.

(5) The principal litter authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.

(6) In any proceedings a certificate which:

- a) purports to be signed by or on behalf of the chief finance officer of a principal litter authority; and
- b) states that payment of a fixed penalty was or was not received by the date specified in the certificate,

is evidence of the facts stated.

(7) In this section:

‘authorised officer’, in relation to a principal litter authority, means an officer

of the authority who is authorised in writing by the authority for the purposes of giving notices under this section;

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

94B Free distribution of printed matter

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

95 Public registers

(1) It shall be the duty of each principal litter authority other than an English county council... or a joint board to maintain, in accordance with this section, a register containing copies of:

- b) all street litter control notices issued under section 93(1) above; and
- c) all orders made by the authority under paragraph 2(1) of Schedule 3A.

(2) Where the requirements of a street litter control notice are varied or added to on an appeal under section 94(7) above a copy of the order making the variation or addition shall be included in the register.

(3) Copies of the orders and notices required to be kept in the register shall be so kept for so long as the order or notice is in force.

(4) It shall be the duty of each authority maintaining a register under this section:

- a) to secure that the register is available, at all reasonable times, for inspection by the public free of charge; and
- b) to afford to members of the public facilities for obtaining copies of the documents kept in the register, on payment of reasonable charges.

(5) A register under this section need not be kept in documentary form.

96 Application of Part II

(1) This section applies to litter and refuse collected:

- a) by any authority or person in pursuance of section 89(1) above;
- b) by a principal litter authority in pursuance of section 92(9) or 92C(3) above; or
- c) by any person in pursuance of section 93 above.

(2) The Secretary of State may make regulations providing that prescribed provisions of Part II shall have effect, with such modifications (if any) as may be prescribed:

- a) as if references to controlled waste or controlled waste of a prescribed description included references to litter and refuse to which this section applies or any description of such litter and refuse;
- b) as if references to controlled waste or controlled waste of a prescribed description collected under section 45 above included references to litter and refuse collected as mentioned in subsection (1) above or any description of such litter and refuse.

(3) The powers conferred by this section are exercisable in relation to litter and refuse to which it applies whether or not the circumstances are such that the litter or refuse would be treated as controlled waste apart from this section and this section is not to affect the interpretation of the expressions defined in section 75 above.

97 Transitional provision relating to section 89

(1) The Secretary of State may, for the purposes of the transition to the duties imposed by section 89 above on local authorities and educational bodies, by regulations, make provision:

- a) modifying that section, or
- b) modifying Part 1 of the Local Government Act 1988 (competition rules for functional work or works contracts).

(2) Regulations under this section may make different provision for different descriptions of authorities, different areas or other different circumstances or cases.

(3) In this section:

‘educational bodies’ means the governing bodies and education authorities mentioned in section 89(1)(f) above; and

‘local authorities’ means the local authorities mentioned in section 89(1)(a) and (c) and (2)(a) above.

97A Fixed penalty notices: supplementary

(1) The appropriate person may by regulations make provision in connection with the powers conferred under:

- a) section 88(6A)(a) and (7) above;
- b) section 94A(4)(a) and (5) above;
- c) paragraph 7(4)(a) and (5) of Schedule 3A.

(2) Regulations under subsection (1) may (in particular):

- a) require an amount specified under section 88(6A)(a), 94A(4)(a) or paragraph 7(4)(a) of Schedule 3A to fall within a range prescribed in the regulations;
- b) restrict the extent to which, and the circumstances in which, an authority can make provision under section 88(7), 94A(5) or paragraph 7(5) of Schedule 3A.

(3) The appropriate person may by order substitute a different amount for the amount for the time being specified in section 88(6A)(b), 94A(4)(b) or paragraph 7(4)(b) of Schedule 3A.

(4) Regulations or an order under this section may make different provision for different purposes.

97B Exclusion of liability

(1) None of the persons mentioned in subsection (2) below is to have any liability to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of the power in section 92(9), 92A(9) or 92C(3) above.

(2) Those persons are:

- a) the principal litter authority and any employee of the authority; and
- b) in the case of the power in section 92C(3) above, any person authorised by the authority under that provision and the employer or any employee of that person.

(3) Subsection (1) above does not apply:

- a) if the act or omission is shown to be in bad faith;
- b) to liability arising out of failure to exercise due care and attention;

c) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).

98 Definitions

(1) The following definitions apply for the interpretation of this Part.

(1A) 'Appropriate person' means:

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

(2) 'Educational institution', in relation to England and Wales, means:

- a) ...
- b) the Open University;
- c) any institution which provides higher education or further education (or both) which is full-time education being an institution which

- (i) is maintained by grants made by the Secretary of State under section 485 of the Education Act 1996;
 - (iii) is maintained by a local education authority;
 - d) any institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992;
 - da) any institution within the further education sector within the meaning of section 91(3) of the Further and Higher Education Act 1992;
 - e) any city technology college, city college for the technology of the arts or Academy;
 - f) any community, foundation or voluntary school;
 - g) any community or foundation special school.
- (3) 'Educational institution', in relation to Scotland, means:
- a) any university within the meaning of the Education Reform Act 1988 funded by the Universities Funding Council under section 131 of that Act;
 - b) the Open University;
 - c) any educational establishment (not being a school) within the meaning of section 135(1) of the Education (Scotland) Act 1980 for the provision of any form of further education for the management of which establishment an education authority is responsible;
 - cc) any college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992 managed by a board of management established under Part 1 of that Act;
 - d) a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;
 - e) a technology academy within the meaning of section 68(1) of the 1989 Act;
 - f) a public school as defined in section 135(1) of the Education (Scotland) Act 1980 ('the 1980 Act');



- g) a grant-aided school as defined in section 135(1) of the 1980 Act;
- h) ...
- (4) 'Joint board', in relation to Scotland, has the meaning given by section 235(1) of the Local Government (Scotland) Act 1973.
- (5) 'Highway' (and 'highway maintainable at the public expense'), 'special road' and 'trunk road', in relation to England and Wales, have the same meaning as in the Highways Act 1980 and 'public road', 'special road' and 'trunk road', in relation to Scotland, have the same meaning as in the Roads (Scotland) Act 1984.
- (5A) 'Litter' includes:
 - a) the discarded ends of cigarettes, cigars and like products, and
 - b) discarded chewing-gum and the discarded remains of other products designed for chewing.
- (6) 'Statutory undertaker' means:
 - a) any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking;
 - aa) any operator of a relevant railway asset;
 - b) any person authorised by any enactment to carry on any canal, inland navigation, dock, harbour or pier undertaking; or
 - c) any relevant airport operator (within the meaning of Part V of the Airports Act 1986).
- (7) Subject to subsection (8) below, 'relevant railway asset' means:
 - a) a transferred network, that is to say a network which was transferred by virtue of a transfer scheme made under section 85 of the Railways Act 1993 from the British Railways Board and vested in the company formed and registered under the Companies Act 1985 and known, at the date of the vesting, as Railtrack PLC,
 - b) a station which is used in connection with the provision of services for the carriage of passengers on a transferred network and is operated by a provider of such services or by the operator of such a network, or

c) a light maintenance depot which is used to provide light maintenance services for rolling stock which is used on a transferred network.

(8) A transferred network shall not cease to be such a network where it is modified by virtue of having any network or part of a network added to or removed from it.

(9) Expressions used in subsections (6)(aa), (7) and (8) above and in Part I of the Railways Act 1993 have the same meaning in those subsections as they have in that Part.

Schedule 3A

Free distribution of printed matter on designated land

Offence of unauthorised distribution

1. (1) A person commits an offence if he distributes any free printed matter without the consent of a principal litter authority on any land which is designated by the authority under this Schedule, where the person knows that the land is so designated.

(2) A person commits an offence if he causes another person to distribute any free printed matter without the consent of a principal litter authority on any land designated by the authority under this Schedule.

(3) A person is not guilty of an offence under sub-paragraph (2) if he took reasonable steps to ensure that the distribution did not occur on any land designated under this Schedule.

(4) Nothing in this paragraph applies to the distribution of printed matter:

a) by or on behalf of a charity within the meaning of the Charities Act 1993, where the printed matter relates to or is intended for the benefit of the charity;

b) where the distribution is for political purposes or for the purposes of a religion or belief.

(5) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) For the purposes of this Schedule:

- a) to 'distribute' printed matter means to give it out to, or offer to make it available to, members of the public and includes placing it on or affixing it to vehicles, but does not include putting it inside a building or letter-box;
- b) printed matter is 'free' if it is distributed without charge to the persons to whom it is distributed.

(7) For the purposes of this Schedule a person does not distribute printed matter if the distribution takes place inside a public service vehicle (within the meaning of the Public Passenger Vehicles Act 1981).

Designation

2. (1) A principal litter authority may by order in accordance with this paragraph designate land in its area for the purposes of this Schedule.

(2) The land designated must consist of:

- a) relevant land of the authority;
- b) all or part of any relevant highway for which the authority is responsible; or
- c) both.

(3) A principal litter authority may only designate land where it is satisfied that the land is being defaced by the discarding of free printed matter which has been distributed there.

(4) Where a principal litter authority proposes to make an order under sub-paragraph (1) above in respect of any land, it must:

- a) publish a notice of its proposal in at least one newspaper circulating in an area which includes the land; and

b) post such a notice on the land.

(5) A notice under sub-paragraph (4) above must specify:

- a) the land proposed to be designated;
- b) the date on which it is proposed that the order is to come into force (which may not be earlier than the end of a period of 28 days beginning with the day on which the notice is given);
- c) the fact that objections may be made to the proposal, how they may be made and the period within which they may be made (being a period of at least 14 days beginning with the day on which the notice is given).

(6) Where after giving notice under sub-paragraph (4) above and taking into account any objections duly made pursuant to sub-paragraph (5)(c) above an authority decides to make an order under sub-paragraph (1) above in respect of any or all of the land in respect of which the notice was given, the authority must:

- a) publish a notice of its decision in at least one newspaper circulating in an area which includes the land; and
- b) post such a notice on the land.

(7) A notice under sub-paragraph (6) above must specify the date on which the order is to come into force, being a date not earlier than

- a) the end of the period of 14 days beginning with the day on which the notice is given; and
- b) the date referred to in sub-paragraph (5)(b) above.

(8) A principal litter authority may at any time revoke an order under sub-paragraph (1) above in respect of any land to which the order relates.

(9) A principal litter authority must:

- a) publish a notice of any revocation under sub-paragraph (8) above in at least one newspaper circulating in an area which includes the land in question; and
- b) post such a notice on the land.

(10) Sub-paragraph (1) above does not apply to an English county council for an area for which there is a district council.

Consent and conditions

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

(2) Consent under this paragraph may be given without limitation or may be limited:

- a) by reference to the material to be distributed;
- b) by reference to a particular period, or particular times or dates;



c) by reference to any part of the designated land;

d) to a particular distribution.

(3) A principal litter authority need not give consent under this paragraph to any applicant where it considers that the proposed distribution would in all the circumstances be likely to lead to defacement of the designated land.

(4) Consent need not be given to any applicant if within the period of five years ending on the date of his application:

a) he has been convicted of an offence under paragraph 1 above; or

b) he has paid a fixed penalty under paragraph 7 below.

(5) Consent may be given under this paragraph subject to such conditions as the authority consider necessary or desirable for:

a) protecting the designated land from defacement; or

b) the effective operation and enforcement of this Schedule.

(6) The conditions which may be imposed by a principal litter authority under this paragraph include conditions requiring any person distributing printed matter pursuant to consent given under this paragraph to produce on demand written evidence of the consent to an authorised officer of the authority.

(7) Consent given by a principal litter authority under this paragraph may at any time be revoked (entirely or to any extent) by notice to the person to whom it was given, where:

a) he has failed to comply with any condition subject to which it was given; or

b) he is convicted of an offence under paragraph 1 above or pays a fixed penalty under paragraph 7 below.

(8) Any condition imposed under this paragraph in relation to any consent may be varied or revoked by notice given to the person to whom the consent was given.

Fees

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

Appeals

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

- a) to refuse consent,
- b) to impose any limitation or condition subject to which consent is given,
- c) to revoke consent (or to revoke it to any extent).

may appeal against the decision to a magistrates' court.

(2) A magistrates' court may on an appeal under this paragraph:

- a) uphold any refusal of consent or require the authority to grant consent (without limitation or condition or subject to any limitation or condition);
- b) require the authority to revoke or vary any condition;
- c) uphold or quash revocation of consent (or uphold or quash revocation to any extent).

Seizure of material

6. (1) Where it appears to an authorised officer of a principal litter authority that a person distributing any printed matter is committing an offence under paragraph 1 above, he may seize all or any of it.
 (2) Any person claiming to own any printed matter seized under this paragraph may apply to a magistrates' court for an order that the printed matter be released to him.

(3) On an application under sub-paragraph (2) above, if the magistrates' court considers that the applicant does own the printed matter, the court shall order the principal litter authority to release it to him, except to the extent that the court considers that the authority needs to retain it for the purposes of proceedings relating to an offence under paragraph 1 above.

(4) Any printed matter seized under this paragraph (and not released under sub-paragraph (3) above) must be returned to the person from whom it is seized:

- a) at the conclusion of proceedings for the offence (unless the court orders otherwise);
- b) at the end of the period in which proceedings for the offence may be instituted, if no such proceedings have been instituted in that period (or have been instituted but discontinued).

(5) Where it is not possible to return any printed matter under sub-paragraph (4) above because the name and address of the person from whom it was seized are not known, a principal litter authority may dispose of or destroy it.

Fixed penalty notices

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

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the principal litter authority.

(3) Subsections (2) to (5) of section 88 above apply in relation to notices given under this paragraph as they apply to notices under that section.

(4) The amount of the fixed penalty payable to a principal litter authority under this paragraph:

- a) is the amount specified by the authority in relation to its area; or
- b) if no amount is specified, is £75.

(5) The principal litter authority to which a fixed penalty is payable under this paragraph may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.

(6) In any proceedings a certificate which:

- a) purports to be signed on behalf of the chief finance officer of a principal litter authority, and
- b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(7) If an authorised officer of a principal litter authority proposes to give a person a notice under this paragraph, the officer may require the person to give him his name and address.

(8) A person commits an offence if:

- a) he fails to give his name and address when required to do so under sub-paragraph (7) above; or
- b) he gives a false or inaccurate name or address in response to a requirement under that sub-paragraph.

(9) A person guilty of an offence under sub-paragraph (8) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) In this paragraph, 'chief finance officer', in relation to a principal litter authority, means the person having responsibility for the financial affairs of that authority.

Supplementary

8. In this Schedule 'authorised officer', in relation to a principal litter authority, means:

- a) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under paragraph 7 above;
- b) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and
- c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices.



Department for Environment,
Food and Rural Affairs

Nobel House
17 Smith Square
London SW1P 3JR

Telephone 020 7238 6000
Website: www.defra.gov.uk
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