



# Clean Neighbourhoods and Environment Act 2005

## 2005 CHAPTER 16

### PART 3

#### LITTER AND REFUSE

#### *Local authority notices*

#### **20 Litter clearing notices**

- (1) Section 90 of the Environmental Protection Act 1990 (c. 43) (litter control areas) shall cease to have effect.
- (2) After section 92 of that Act insert—

#### **“92A Litter clearing notices**

- (1) A principal litter authority may in accordance with this section serve a notice (a “litter clearing notice”) in relation to any land in its area which is open to the air.
- (2) Before serving a litter clearing notice in relation to any land a principal litter authority must be satisfied that the land is defaced by litter or refuse so as to be detrimental to the amenity of the locality.
- (3) A litter clearing notice is to require the person on whom it is served—
  - (a) to clear the land of the litter or refuse; and
  - (b) if the principal litter authority is satisfied that the land is likely to become defaced by litter or refuse again, to take reasonable steps to prevent it from becoming so defaced.
- (4) A litter clearing notice must be served on—
  - (a) the occupier of the land to which it relates; or

- (b) if the land is not occupied, the owner.
- (5) A litter clearing notice imposing a requirement under subsection (3)(a) above may specify—
- (a) a period within which the requirement must be complied with;
  - (b) standards of compliance.
- (6) A period specified under subsection (5)(a) above may not be less than 28 days beginning with the day on which the notice is served.
- (7) A principal litter authority must, in discharging its functions under this section, have regard to any guidance given to the authority by the appropriate person.
- (8) The form and content of a litter clearing notice is to be such as the appropriate person may by order specify.
- (9) Where a principal litter authority proposes to serve a litter clearing notice in respect of any land but is unable after reasonable enquiry to ascertain the name or proper address of the occupier of the land (or, if the land is unoccupied, the owner)—
- (a) the authority may post the notice on the land (and may enter any land to the extent reasonably necessary for that purpose), and
  - (b) the notice is to be treated as having been served upon the occupier (or, if the land is unoccupied, the owner) at the time the notice is posted.
- (10) Subsection (1) above does not apply to an English county council for an area for which there is a district council.
- (11) A litter clearing notice may not be served in relation to land of any of the following descriptions—
- (a) a highway maintainable at the public expense;
  - (b) land under the direct control of a principal litter authority;
  - (c) Crown land;
  - (d) relevant land of a designated statutory undertaker;
  - (e) relevant land of a designated educational institution;
  - (f) land which is covered (but “open to the air” for the purposes of this Part by virtue of section 86(13) above) and to which the public are not entitled or permitted to have access, with or without payment.

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

- (1) A person on whom a litter clearing notice is served under section 92A above may appeal against it to a magistrates' court in accordance with the provisions of this section.
- (2) An appeal under this section must be made within a period of 21 days beginning with the day on which the notice is served.
- (3) The grounds on which an appeal under this section may be made are that—
- (a) there is a material defect or error in, or in connection with, the notice;
  - (b) the notice should have been served on another person;

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*Status: This is the original version (as it was originally enacted).*

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- (c) the land is not defaced by litter or refuse so as to be detrimental to the amenity of the locality;
  - (d) the action required is unfair or unduly onerous.
- (4) A notice against which an appeal under this section is made is of no effect pending the final determination or withdrawal of the appeal.
- (5) On the determination of an appeal under this section, the magistrates' court must—
  - (a) quash the notice;
  - (b) modify the notice (including modifying it by extending the period specified in it); or
  - (c) dismiss the appeal.

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

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

## **21 Street litter control notices**

- (1) In section 93 of the Environmental Protection Act 1990 (c. 43) (street litter control notices), after subsection (3) insert—
  - “(3A) A vehicle or stall or other moveable structure which is used for one or more commercial or retail activities while parked or set at a particular place on or verging a street is to be treated for the purposes of this section and section 94 below as if it were premises situated at that place having a frontage on that street in the place where it is parked or set.
  - (3B) In subsection (3A) above, “vehicle” means any vehicle intended or adapted for use on roads.”
- (2) In section 94 of that Act (supplementary provisions in relation to street litter control notices), in subsection (4)(b) after “so specified” insert “(including the standards to which any such thing must be done)”.
- (3) In that section, for subsections (8) and (9) substitute—

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

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

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

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

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

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

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

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