



Clean Neighbourhoods and Environment Act 2005

2005 CHAPTER 16

PART 9

MISCELLANEOUS

Use of fixed penalty receipts

96 Use of fixed penalty receipts: higher tier authorities

- (1) This section applies in relation to—
 - (a) amounts paid to an authority, other than a parish or community council, in pursuance of notices under sections 88 and 94A of and paragraph 7 of Schedule 3A to the Environmental Protection Act 1990 (c. 43);
 - (b) amounts paid to an authority, other than a parish or community council, in pursuance of notices under section 43(1) of the Anti-social Behaviour Act 2003 (c. 38);
 - (c) amounts paid to a primary authority, within the meaning of Chapter 1 of Part 6 above, in pursuance of notices under section 59 above.
- (2) The amounts to which this section applies which are paid to an authority are in this section called the authority's "fixed penalty receipts".
- (3) An authority may use its fixed penalty receipts only for the purposes of qualifying functions of the authority.
- (4) For the purposes of this section the "qualifying functions" of an authority are—
 - (a) its functions under Part 4 of the Environmental Protection Act 1990;
 - (b) its functions under section 43 of the Anti-social Behaviour Act 2003;
 - (c) its functions under Chapter 1 of Part 6 above; and
 - (d) such other of its functions as may be specified in regulations made by the appropriate person.

- (5) Regulations under subsection (4)(d) may (in particular) have the effect that an authority may use its fixed penalty receipts for the purposes of any of its functions.
- (6) An authority must supply the appropriate person with such information relating to its fixed penalty receipts as the appropriate person may require.
- (7) The appropriate person may by regulations—
- (a) make provision for what an authority is to do with its fixed penalty receipts—
 - (i) pending their being used for the purposes of qualifying functions of the authority;
 - (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
 - (b) make provision for accounting arrangements in respect of an authority's fixed penalty receipts.
- (8) The provision that may be made under subsection (7)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the authority.
- (9) Before making regulations under this section, the appropriate person must consult—
- (a) the authorities to which the regulations are to apply;
 - (b) such other persons as the appropriate person thinks fit.
- (10) The powers to make regulations conferred by this section are, for the purposes of subsection (1) of section 100 of the Local Government Act 2003 (c. 26), to be regarded as included among the powers mentioned in subsection (2) of that section.

97 Use of fixed penalty receipts: lower tier authorities

- (1) The appropriate person must by regulations make provision relating to—
- (a) the use by a parish or community council of amounts received by it in pursuance of notices under—
 - (i) section 88 of the Environmental Protection Act 1990 (c. 43);
 - (ii) section 43(1) of the Anti-social Behaviour Act 2003 (c. 38); and
 - (iii) section 59 above; and
 - (b) the use by a person or body designated under section 58(3) above as a secondary authority for the purposes of Chapter 1 of Part 6 above of amounts received by that person or body in pursuance of notices under section 59 above.
- (2) Regulations under this section may in particular include provision requiring a parish or community council or a person or body referred to in subsection (1)(b)—
- (a) to use the amounts received as specified in subsection (1) only for the purpose of such of its functions as may be specified in the regulations;
 - (b) to pay sums in respect of those amounts to another person (including the appropriate person);
 - (c) to supply information in relation to those amounts to the appropriate person;
 - (d) to adopt such accounting arrangements in respect of those amounts as may be specified in the regulations.

- (3) Regulations under this section may include provision framed by reference to performance categories conferred on a parish or community council by such person as may be specified in the regulations.

98 Sections 96 and 97: supplementary

- (1) In sections 96 and 97, “appropriate person” means—
- (a) the Secretary of State, in relation to England;
 - (b) the National Assembly for Wales, in relation to Wales.
- (2) The powers to make regulations conferred by sections 96 and 97 include—
- (a) power to make different provision for different purposes (including different provision for different authorities or different descriptions of authority);
 - (b) power to make consequential, supplementary, incidental and transitional provision and savings.
- (3) Regulations under sections 96 and 97 must be made by statutory instrument.
- (4) The Secretary of State may not make a statutory instrument containing regulations under section 96 or 97 unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Shopping and luggage trolleys

99 Abandoned shopping and luggage trolleys

- (1) Schedule 4 to the Environmental Protection Act 1990 (c. 43) is amended as follows.
- (2) In paragraph 3(2) (retention, return and disposal of trolleys: notice to owner) for “seized or removed” substitute “seized and removed”.
- (3) After paragraph 3 insert—
- “3A (1) This paragraph applies where the local authority is entitled to sell or otherwise dispose of a shopping or luggage trolley in accordance with paragraph 3(1)(b).
- (2) If it appears to the authority that a particular person is the owner of the trolley, the authority may charge him a sum in respect of the removal, storage and disposal of the trolley.
- (3) The charge is payable to the authority on demand.
- (4) The sum payable as a charge under this paragraph is recoverable by the authority as a debt due to it.
- (5) In proceedings against a person under sub-paragraph (4) for enforcement of a charge, it is a defence for the person to prove that he was not the owner of the trolley to which the charge relates at the time it was removed.”
- (4) In paragraph 4 (charges)—
- (a) in sub-paragraph (1)—

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

- (i) for the words from “in fixing” to “sufficient” substitute “in fixing the charges to be paid under this Schedule, shall secure that the charges so payable are such as are sufficient”, and
- (ii) for “such trolleys” substitute “shopping or luggage trolleys”, and
- (b) in sub-paragraph (2), after “paragraph 3” insert “or 3A”.

100 Section 99: transitional provision

- (1) This section applies if, before the commencement date, a local authority in England and Wales has resolved under section 99 of the Environmental Protection Act 1990 that Schedule 4 to that Act is to apply in its area.
- (2) If the day specified in the resolution for the coming into force of Schedule 4 in the authority’s area falls on or after the commencement date, the resolution is to be of no effect.
- (3) If Schedule 4 applies in the authority’s area immediately before the commencement date, the Schedule is to continue to apply in the authority’s area on and after the commencement date as it applied before that date.
- (4) But Schedule 4 shall not so apply in relation to any shopping or luggage trolley seized by the authority on or after the relevant day.
- (5) For the purposes of subsection (4) the relevant day is the earlier of—
 - (a) the third anniversary of the commencement date;
 - (b) if the authority resolves under section 99 of the Environmental Protection Act 1990 (c. 43) that Schedule 4 (as amended by section 99 of this Act) is to apply in its area, the day specified in the resolution as the day on which the Schedule (as so amended) comes into force in its area.
- (6) So long as Schedule 4 continues to apply as described in subsection (3), the reference in section 99(4) of the Environmental Protection Act 1990 to Schedule 4 is to be treated as including a reference to Schedule 4 as it so applies.
- (7) If the authority resolves under section 99 that Schedule 4 (as amended by section 99 of this Act) is to apply in its area, the authority may not in giving effect to paragraph 4(1) of Schedule 4 (as so amended) take into account charges payable in relation to shopping or luggage trolleys seized before the Schedule (as so amended) comes into force in its area.
- (8) Nothing in this section prevents the authority from bringing to an end the application of Schedule 4 in its area.
- (9) In this section—
 - “the commencement date” is the day on which section 99 of this Act comes into force;
 - “local authority” has the same meaning as in section 99 of the Environmental Protection Act 1990;
 - “luggage trolley” and “shopping trolley” have the same meaning as in Schedule 4 to that Act.

Statutory nuisances

101 Statutory nuisance: insects

(1) Section 79 of the Environmental Protection Act 1990 (statutory nuisances and inspections) is amended as follows.

(2) In subsection (1) (matters constituting statutory nuisances) after paragraph (f) insert—
“(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;”.

(3) After subsection (5) insert—

“(5A) Subsection (1)(fa) does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only.”

(4) In subsection (7) at the appropriate place insert—

““appropriate person” means—

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

(5) After subsection (7B) (as inserted by section 102(6)) insert—

“(7C) In this Part “relevant industrial, trade or business premises” means premises that are industrial, trade or business premises as defined in subsection (7), but excluding—

- (a) land used as arable, grazing, meadow or pasture land,
- (b) land used as osier land, reed beds or woodland,
- (c) land used for market gardens, nursery grounds or orchards,
- (d) land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the appropriate person, and
- (e) land included in a site of special scientific interest (as defined in section 52(1) of the Wildlife and Countryside Act 1981),

and excluding land covered by, and the waters of, any river or watercourse, that is neither a sewer nor a drain, or any lake or pond.

(7D) For the purposes of subsection (7C)—

“agricultural” has the same meaning as in section 109 of the Agriculture Act 1947;

“agricultural unit” means land which is occupied as a unit for agricultural purposes;

“drain” has the same meaning as in the Water Resources Act 1991;

“lake or pond” has the same meaning as in section 104 of that Act;

“sewer” has the same meaning as in that Act.”

102 Statutory nuisance: lighting

(1) Section 79 of the Environmental Protection Act 1990 (c. 43) is amended as follows.

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

(2) In subsection (1) (matters constituting statutory nuisances) after paragraph (fa) (as inserted by section 101 (2)) insert—

“(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;”.

(3) In subsection (2) (exception from subsection (1)(b) and (g) for premises occupied for defence purposes) after “Subsection (1)(b)” insert “, (fb)”.

(4) After subsection (5A) (as inserted by section 101 (3)) insert—

“(5B) Subsection (1)(fb) does not apply to artificial light emitted from—

- (a) an airport;
- (b) harbour premises;
- (c) railway premises, not being relevant separate railway premises;
- (d) tramway premises;
- (e) a bus station and any associated facilities;
- (f) a public service vehicle operating centre;
- (g) a goods vehicle operating centre;
- (h) a lighthouse;
- (i) a prison.”

(5) In subsection (7) (definitions) at the appropriate place insert—

““airport” has the meaning given by section 95 of the Transport Act 2000;”;

““associated facilities”, in relation to a bus station, has the meaning given by section 83 of the Transport Act 1985;”;

““bus station” has the meaning given by section 83 of the Transport Act 1985;”;

““goods vehicle operating centre”, in relation to vehicles used under an operator’s licence, means a place which is specified in the licence as an operating centre for those vehicles, and for the purposes of this definition “operating centre” and “operator’s licence” have the same meaning as in the Goods Vehicles (Licensing of Operators) Act 1995;”;

““harbour premises” means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition “harbour area” and “harbour operations” have the same meaning as in Part 3 of the Aviation and Maritime Security Act 1990;”;

““lighthouse” has the same meaning as in Part 8 of the Merchant Shipping Act 1995;”;

““prison” includes a young offender institution;”;

““public service vehicle operating centre”, in relation to public service vehicles used under a PSV operator’s licence, means a place which is an operating centre of those vehicles, and for the purposes of this definition “operating centre”, “PSV operator’s licence” and “public service vehicle” have the same meaning as in the Public Passenger Vehicles Act 1981;”;

““railway premises” means any premises which fall within the definition of “light maintenance depot”, “network”, “station” or “track” in section 83 of the Railways Act 1993;”;

““relevant separate railway premises” has the meaning given by subsection (7A);”;

““tramway premises” means any premises which, in relation to a tramway, are the equivalent of the premises which, in relation to a railway, fall within the definition of “light maintenance depot”, “network”, “station” or “track” in section 83 of the Railways Act 1993;”.

(6) After subsection (7) insert—

“(7A) Railway premises are relevant separate railway premises if—

- (a) they are situated within—
 - (i) premises used as a museum or other place of cultural, scientific or historical interest, or
 - (ii) premises used for the purposes of a funfair or other entertainment, recreation or amusement, and
- (b) they are not associated with any other railway premises.

(7B) For the purposes of subsection (7A)—

- (a) a network situated as described in subsection (7A)(a) is associated with other railway premises if it is connected to another network (not being a network situated as described in subsection (7A)(a));
- (b) track that is situated as described in subsection (7A)(a) but is not part of a network is associated with other railway premises if it is connected to track that forms part of a network (not being a network situated as described in subsection (7A)(a));
- (c) a station or light maintenance depot situated as described in subsection (7A)(a) is associated with other railway premises if it is used in connection with the provision of railway services other than services provided wholly within the premises where it is situated.

In this subsection “light maintenance depot”, “network”, “railway services”, “station” and “track” have the same meaning as in Part 1 of the Railways Act 1993.”

(7) In subsection (8) (port health authority to have functions of local authority under Part 3 of that Act, except those relating to statutory nuisance within section 79(1)(g) or (ga)) after “paragraph” insert “(fb)”.

(8) In subsection (10) (consent of Secretary of State or National Assembly for Wales required before taking proceedings for certain statutory nuisances) after “paragraph (b), (d), (e)” insert “, (fb)”.

103 Sections 101 and 102: supplementary

(1) The Environmental Protection Act 1990 (c. 43) is amended as follows.

(2) In section 80(8) (summary proceedings for statutory nuisances: defence of best practicable means not available in certain cases)—

- (a) in paragraph (a) after “paragraph (a), (d), (e), (f)” insert “, (fa)”, and

(b) after paragraph (a) insert—

“(aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—

- (i) the artificial light is emitted from industrial, trade or business premises, or
- (ii) the artificial light (not being light to which subparagraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;”.

(3) After section 80(8) insert—

“(8A) For the purposes of subsection (8)(aza) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.

(8B) For the purposes of subsection (8A) “relevant sport” means a sport that is designated for those purposes by order made by the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales.

A sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

(8C) In subsection (8A) “domestic premises” means—

- (a) premises used wholly or mainly as a private dwelling, or
- (b) land or other premises belonging to, or enjoyed with, premises so used.”

(4) In section 82(10) (summary proceedings by aggrieved person: defence of best practicable means not available in certain cases)—

(a) in paragraph (a) after “paragraph (a), (d), (e), (f)” insert “, (fa)”, and

(b) after paragraph (a) insert—

“(aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—

- (i) the artificial light is emitted from industrial, trade or business premises, or
- (ii) the artificial light (not being light to which subparagraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;”.

(5) After section 82(10) insert—

“(10A) For the purposes of subsection (10)(aza) “relevant sports facility” has the same meaning as it has for the purposes of section 80(8)(aza).”

Pollution

104 Contaminated land: appeals against remediation notices

(1) Section 78L of the Environmental Protection Act 1990 (c. 43) (appeals against remediation notices) is amended as follows.

- (2) In subsection (1), for paragraphs (a) and (b) substitute—
 - “(a) if it was served by a local authority in England, or served by the Environment Agency in relation to land in England, to the Secretary of State;
 - (b) if it was served by a local authority in Wales, or served by the Environment Agency in relation to land in Wales, to the National Assembly for Wales;”.
- (3) In that subsection, for the words from “means” to the end substitute “the Secretary of State or the National Assembly for Wales, as the case may be”.
- (4) In subsection (4)—
 - (a) omit paragraph (b);
 - (b) in paragraph (c), omit the words from “or on” to the end.
- (5) In subsection (6), omit the words “so far as relating to appeals to the Secretary of State”.
- (6) This section does not have effect in relation to a remediation notice served under Part 2A of the Environmental Protection Act 1990 before the commencement of this section.
- (7) The power of the Secretary of State and National Assembly for Wales under section 114 of the Environment Act 1995 (c. 25) in relation to appeals under section 78L of the Environmental Protection Act 1990 extends to appeals under that section as amended by this section.

105 Offences relating to pollution etc: penalties on conviction

- (1) In paragraph 25 of Schedule 1 to the Pollution Prevention and Control Act 1999 (c. 24) (purposes for which regulations may be made under section 2: offences), in sub-paragraph (2)(a)—
 - (a) in paragraph (i) for “six months” substitute “12 months”;
 - (b) in paragraph (ii) for “£20,000” substitute “£50,000”.
- (2) Subsection (1) does not have effect in relation to regulations under section 2 of the Pollution Prevention and Control Act 1999 so far as relating to offences committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44).