



# City of Newcastle upon Tyne Act 2000

## 2000 CHAPTER viii

### PART 5

#### DISTRIBUTION OF FREE LITERATURE

#### 21 Interpretation of Part 5

In this Part—

“designated place” means a place designated under subsection (1) of section 22 (Distribution of free literature) of this Act or any part thereof;

“distribute” means to offer or make available, and includes the placing of free literature on, or affixing it to, a vehicle;

“the Executive” means the Tyne and Wear Passenger Transport Executive;

“free literature” means any newspaper, document, card or other literature for which no charge is made to the recipient and which advertises, or contains or comprises an advertisement, for commercial gain; and

“public passenger transport service” has the same meaning as in section 63(10) of the Transport Act 1985 (c. 67).

#### 22 Distribution of free literature

(1) On and from the appointed day the council may designate, in accordance with subsection (10) below, any of the following places, or any part of such places, in the city as places to which this section applies:—

- (a) (i) a public off-street car park;
- (ii) a recreation ground, garden, park, pleasure ground or open space under the management or control of the council; or
- (b) a street or way to which the public commonly have access, whether or not as of right.

(2) A person who distributes free literature in a designated place without the consent of the council or in breach of any condition subject to which the council’s consent is

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given or causes or permits any person so to do shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- (3) (a) The reference in subsection (2) above to a person who distributes free literature in a designated place shall be deemed to include a reference to a person who distributes free literature on or from the land within 7 metres of any designated street who is not—
- (i) the owner of that land; or
  - (ii) the person liable to be assessed to the uniform business rate in respect thereof; or
  - (iii) on that land with the consent in writing of either of the persons mentioned in sub-paragraphs (i) and (ii) above.
- (b) Where in any proceedings under this section it is shown that any free literature was distributed by a person on or from land within 7 metres of any street or designated street the burden of proof shall lie on that person to show to the satisfaction of the court that at the relevant time he was a person referred to in sub-paragraph (i) or (ii) of the foregoing paragraph or had the consent referred to in sub-paragraph (iii) thereof.
- (4) Where a person is distributing free literature in a designated place without the consent of the council an authorised officer or a constable may seize any supply of that literature which the person has at or near that place.
- (5) (a) The following provisions of this subsection shall have effect where any literature is seized under subsection (4) above and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the literature is seized.
- (b) Subject to paragraph (c) below, at the conclusion of the proceedings the literature shall be returned to the person from whom it was seized unless the court orders it to be forfeited under any enactment.
- (c) If no proceedings are instituted before the expiration of a period of 56 days beginning with the date of seizure, or any proceedings instituted within that period are discontinued, at the expiration of that period or, as the case may be, on the discontinuance of the proceedings, the literature shall be returned to the person from whom it was seized unless it has not proved possible, after diligent enquiry, to identify that person and ascertain his address.
- (d) Where the literature is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address the council or the chief constable may apply to a magistrates' court for an order as to the manner in which they should deal with it.
- (6) The conditions of consent referred to in subsection (2) above include, without prejudice to the generality of the power to impose conditions—
- (a) conditions as to the times or period for which the consent is valid;
  - (b) conditions for the prevention of detriment to the amenities of the area;
  - (c) a condition requiring the person distributing free literature to produce on demand to an authorised officer or to a constable documentary evidence of the consent;
  - (d) conditions as to the place where the consent is to apply; and
  - (e) conditions as to the payment for the consent of such reasonable fee as may be determined by the council which may, without prejudice to the generality

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of the foregoing, when taken together with other such fees charged by the council, be sufficient to cover—

- (i) the reasonable administrative and enforcement costs in operating the provisions of this Part of this Act; and
- (ii) the costs of removing from, or from the vicinity of, designated places free literature which has been distributed in contravention of the provisions of this section and has been discarded.

(7) The grounds upon which the council may withhold consent under subsection (2) above are that—

- (a) the applicant is unsuitable by reason of misconduct;
- (b) the applicant has within the previous 5 years been convicted of an offence under this section;
- (c) there is already a sufficiency of persons to whom consent has been given under this section, carrying out in the place where the consent is to apply the activity in respect of which the consent is requested;
- (d) there would be a risk of danger or unreasonable inconvenience to users of the place if the consent is given;
- (e) it is likely to be detrimental to the amenities of the place if the consent is given.

(8) A consent given under subsection (2) above may be revoked by notice to the person to whom the consent was given if that person—

- (a) is considered to be unsuitable by reason of misconduct after the consent was given;
- (b) committed an offence under this section; or
- (c) has failed to avail himself, or to avail himself to a reasonable extent, of the consent.

(9) A person aggrieved by—

- (a) the withholding by the council of consent referred to in subsection (2) above;
- (b) the conditions subject to which the council give such consent; or
- (c) the revocation of such consent under subsection (8) above;

may appeal to a magistrates' court acting for a petty sessions area which includes the city by way of complaint for an order and on such an appeal the court may dismiss or allow the appeal or may vary any conditions imposed by the council.

- (10) (a) Before designating any place under subsection (1) above the council shall give notice of their proposal by advertisement in a local newspaper circulating in the city and by posting a copy of the notice in the places to which it relates, stating that objections to the proposals may be made to the council within a time, not less than 28 days after the giving of the notice, specified in the notice.
- (b) After taking into consideration any objections made in accordance with paragraph (a) above, the council may by resolution designate, as places to which this section applies for the purposes of subsection (2) above, all or any, or any part, of the places specified in the notice given under that paragraph.

(11) A resolution under subsection (10)(b) above shall come into force on such days as shall be specified by a notice given in the same manner as a notice given under subsection (10)(a) above, being a day not less than 28 days after the day on which a notice is given under this subsection.

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- (12) Any resolution under subsection (10)(b) above may be rescinded, or varied by the deletion of any place or part of a place, by a subsequent resolution of the council.
- (13) This section does not apply to the distribution of free literature—
- (a) by a charity within the meaning of the Charities Act 1993 (c. 10) where that literature relates to or is for the benefit of that body;
  - (b) by or on behalf of a political organisation;
  - (c) by a person who distributes the literature by putting it into a building or letterbox;
  - (d) by the Executive or any of its subsidiaries where the literature relates wholly or mainly to a public passenger transport service; or
  - (e) by any other person who provides a public passenger transport service which is the subject of an agreement made with the Executive under any enactment where the literature relates wholly or mainly to that service.
- (14) The Council shall not for the purposes of this section designate—
- (a) any property in the ownership of Railtrack PLC and used for the purposes of its railway network or as a railway station; or
  - (b) any property in the ownership or under the control of the Executive and used by them for the purposes of the system of railways authorised by the Tyne and Wear Passenger Transport Acts and Orders 1973 to 1998.