



# Anti-social Behaviour Act 2003

## 2003 CHAPTER 38

### PART 6

#### THE ENVIRONMENT

##### *Penalty notices for graffiti and fly-posting*

#### **43 Penalty notices for graffiti and fly-posting**

- (1) Where an authorised officer of a local authority has reason to believe that a person has committed a relevant offence 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 penalty in accordance with the notice.
- (2) But an authorised officer may not give a notice under subsection (1) if he considers that the commission of the offence—
  - (a) in the case of a relevant offence falling within section 44(1)(c), also involves the commission of an offence under section 30 of the Crime and Disorder Act 1998 (c. 37), or
  - (b) in the case of any other relevant offence, was motivated (wholly or partly) by hostility—
    - (i) towards a person based upon his membership (or presumed membership) of a racial or religious group, or
    - (ii) towards members of a racial or religious group based on their membership of that group.
- (3) In the case of a relevant offence falling within section 44(1)(f), an authorised officer may not give a notice to a person under subsection (1) in relation to the display of an advertisement unless he has reason to believe that that person personally affixed or placed the advertisement to, against or upon the land or object on which the advertisement is or was displayed.
- (4) Where a person is given a notice under subsection (1) in respect of an offence—

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- (a) no proceedings may be instituted for that offence (or any other relevant offence arising out of the same circumstances) before the expiration of the period of fourteen days following the date of the notice, and
  - (b) he may not be convicted of that offence (or any other relevant offence arising out of the same circumstances) if before the expiration of that period he pays the penalty in accordance with the notice.
- (5) A notice under subsection (1) must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (6) A notice under subsection (1) must also state—
- (a) the period during which, by virtue of subsection (4), proceedings will not be instituted for the offence,
  - (b) the amount of the penalty, and
  - (c) the person to whom and the address at which the penalty may be paid.
- (7) Without prejudice to payment by any other method, payment of a penalty in pursuance of a notice under subsection (1) may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (6)(c) at the address so mentioned.
- (8) Where a letter is sent in accordance with subsection (7) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (9) A notice under subsection (1) must be in such form as the appropriate person may by order prescribe.
- (10) Subject to subsection (11), the penalty payable in pursuance of a notice under subsection (1) is £50.
- (11) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (10).

#### Commencement Information

**I1** S. 43 in force at 31.3.2004 for W. by [S.I. 2004/999](#), [art. 2\(d\)](#)

**I2** S. 43 in force at 31.3.2004 for E. by [S.I. 2004/690](#), [art. 3\(d\)](#)

## 44 Meaning of relevant offence

- (1) “Relevant offence” means—
- (a) an offence under paragraph 10 of section 54 of the Metropolitan Police Act 1839 (c. 47) (affixing posters etc),
  - (b) an offence under section 20(1) of the London County Council (General Powers) Act 1954 (defacement of streets with slogans etc),
  - (c) an offence under section 1(1) of the Criminal Damage Act 1971 (c. 48) (damaging property etc) which involves only the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means,
  - (d) an offence under section 131(2) of the Highways Act 1980 (c. 66) (including that provision as applied by section 27(6) of the Countryside Act 1968 (c. 41)) which involves only an act of obliteration,

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- (e) an offence under section 132(1) of the Highways Act 1980 (painting or affixing things on structures on the highway etc),
  - (f) an offence under section 224(3) of the Town and Country Planning Act 1990 (c. 8) (displaying advertisement in contravention of regulations).
- (2) This section has effect for the purposes of the interpretation of section 43.

#### Commencement Information

- I3** S. 44 in force at 31.3.2004 for E. by [S.I. 2004/690](#), [art. 3\(e\)](#)
- I4** S. 44 in force at 31.3.2004 for W. by [S.I. 2004/999](#), [art. 2\(e\)](#)

## 45 Penalty receipts

- (1) Penalties which are payable in pursuance of notices under section 43(1) are payable to local authorities.
- (2) In any proceedings a certificate which—
  - (a) purports to be signed by or on behalf of the person responsible for the financial affairs of a local authority, and
  - (b) states that payment of a penalty payable in pursuance of a notice under section 43(1) was or was not received by a date specified in the certificate, is evidence of the facts stated.
- (3) A local authority may use any sums it receives in respect of penalties payable to it in pursuance of notices under section 43(1) (its “penalty receipts”) only for the purposes of functions of its that are qualifying functions.
- (4) The following are qualifying functions for the purposes of this section—
  - (a) functions under section 43, and
  - (b) functions of a description specified in regulations made by the appropriate person.
- (5) Regulations under subsection (4)(b) may (in particular) have the effect that a local authority may use its penalty receipts for the purposes of any of its functions.
- (6) A local authority must supply the appropriate person with such information relating to its use of its penalty receipts as the appropriate person may require.
- (7) The appropriate person may by regulations—
  - (a) make provision for what a local authority is to do with its 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 a local authority’s 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 local authority.
- (9) Before making regulations under this section, the appropriate person must consult—

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- (a) the local authorities to which the regulations are to apply, and
- (b) such other persons as the appropriate person considers appropriate.

#### Commencement Information

- I5** S. 45 in force at 31.3.2004 for W. by [S.I. 2004/999, art. 2\(f\)](#)  
**I6** S. 45 in force at 31.3.2004 for E. by [S.I. 2004/690, art. 3\(f\)](#)

## 46 Powers of police civilians

- (1) In paragraph 1 of Schedule 4 to the Police Reform Act 2002 (c. 30) (powers of community support officers to issue fixed penalty notices)—
- (a) at the end of sub-paragraph (2)(c) omit “and”, and
  - (b) after sub-paragraph (2)(c) insert—
    - “(ca) the power of an authorised officer of a local authority to give a notice under section 43(1) of the Anti-social Behaviour Act 2003 (penalty notices in respect of graffiti or fly-posting); and”.
- (2) In paragraph 1 of Schedule 5 to that Act (powers of accredited persons to issue fixed penalty notices)—
- (a) at the end of sub-paragraph (2)(b) omit “and”, and
  - (b) after sub-paragraph (2)(b) insert—
    - “(ba) the power of an authorised officer of a local authority to give a notice under section 43(1) of the Anti-social Behaviour Act 2003 (penalty notices in respect of graffiti or fly-posting); and”.

#### Commencement Information

- I7** S. 46 in force at 31.3.2004 by [S.I. 2004/690, art. 2\(a\)\(i\)](#)

## 47 Interpretation etc

- (1) In this section and sections 43 and 45—
- “advertisement” and “land” have the meanings given by section 336(1) of the Town and Country Planning Act 1990 (c. 8),
  - “appropriate person” means—
    - (a) in relation to England, the Secretary of State, and
    - (b) in relation to Wales, the National Assembly for Wales,
  - “authorised officer” means an officer of a local authority who is authorised in writing by the authority for the purpose of giving notices under section 43(1),
  - “local authority” means an authority in England and Wales which is a litter authority for the purposes of section 88 of the Environmental Protection Act 1990 (c. 43),
  - “racial group” and “religious group” have the meanings given by section 28(4) and (5) of the Crime and Disorder Act 1998 (c. 37).

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- (2) Section 28(2) of the Crime and Disorder Act 1998 is to apply for the purposes of section 43(2)(b)(i) as it applies for the purposes of section 28(1)(a) of that Act.
- (3) The appropriate person may issue guidance—
- (a) about the exercise of the discretion to give notices under section 43(1), and
  - (b) about the giving of such notices.

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**Commencement Information**

- 18** S. 47 in force at 31.3.2004 for W. by [S.I. 2004/999](#), **art. 2(g)**
- 19** S. 47 in force at 31.3.2004 for E. by [S.I. 2004/690](#), **art. 3(g)**

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