

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 9: Miscellaneous

Use of fixed penalty receipts

Section 96 Use of fixed penalty receipts: higher tier authorities

243. [Section 96](#) enables “higher tier” authorities to use for certain functions the money received from any fixed penalty notices they issue in respect of certain offences relating to litter, graffiti fly-posting and dog control offences. In particular, in respect of litter the relevant offences are those of dropping litter, of failing to comply with a litter clearing notice or street litter control notice, and of distributing free printed matter without consent in a designated area.
244. Higher tier authorities are authorities other than a parish or community council, i.e. a local authority.
245. *Subsection (3), (4) and (5)* set out the functions that the receipts can be used for (which may be set out in regulations).
246. *Subsection (10)* makes similar provision to that made by section 8 (*subsection (8)*) as described in paragraph 44 above.

Section 97 Use of fixed penalty receipts: lower tier authorities

247. [Section 97](#) relates to the use of receipts by “lower tier” authorities from fixed penalty notices issued by them for certain offences relating to litter, graffiti, fly-posting and dog control offences. Lower tier authorities are parish or community councils, or secondary authorities designated for dog control offences under section 58(3).
248. [Section 97](#) requires regulations to be made relating to the use of such receipts collected by lower tier authorities. The regulations may specify which (if any) of their functions lower tier authorities may use their fixed penalty receipts for. Alternatively, the regulations could require such receipts to be paid to another person or body, such as the Secretary of State or National Assembly for Wales.
249. *Subsection (3)* allows regulations under section 97 to be linked to performance of lower tier authorities. For example, regulations under *subsection (1)* could make the use of fixed penalty receipts dependent on performance, such that high performing authorities could be allowed to spend their receipts on any of their functions.

Section 98: Sections 96 and 97: supplementary

250. **Section 98** provides a definition of "appropriate person" for the purposes of the powers conferred by sections 96 and 97. The effect is that the powers are conferred on the Secretary of State in relation to England, and the Assembly in relation to Wales.
251. *Subsections (3) and (4)* require the regulations to be made by affirmative resolution.

Shopping and luggage trolleys

Section 99 Abandoned shopping and luggage trolleys

252. **Section 99** amends Schedule 4 to the Environmental Protection Act 1990 so as to enable a local authority to charge the person believed to be the owner of an abandoned shopping or luggage trolley for its removal, storage and disposal. Prior to this section coming into force, charges were only payable by persons actually claiming the return of their trolleys. If proceedings were brought against a person for the recovery of such a charge, it was a defence for him to prove that he was not the owner of the trolley at the time it was removed.

Section 100 Section 99: transitional provision

253. **Section 100** sets out the transitional provisions that apply where, before section 99 comes into force, a local authority has resolved under section 99 of the Environmental Protection Act 1990 to apply Schedule 4 to that Act in its area.
254. *Subsection (2)* provides that such a resolution is to have no effect if the date it set for Schedule 4 to apply in the local authority's area fell on or after the day on which section 99 came into force.
255. If the resolution has already taken effect at the date section 99 comes into force, *subsections (3) to (5)* allow Schedule 4 to continue to apply in the local authority's area without the amendments made by the Act for no more than three years. These subsections do not prevent the local authority from resolving to apply Schedule 4 as amended by this Act at any time in those three years.
256. *Subsection (7)* ensures that a local authority, in fixing the level of charges to be imposed on the owners of seized trolleys, keeps separate the costs and charges associated with the new and old versions of Schedule 4.

Statutory nuisances

Section 101 Statutory nuisance: insects

257. This section amends section 79 of the Environmental Protection Act 1990 so as to provide that the statutory nuisances listed in that section include "insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance". This has the effect of subjecting nuisance insects from such premises to the statutory nuisance regime in Part 3 of the Environmental Protection Act 1990.
258. The effect of *subsection (3)* is to prevent any insect included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), other than those included in respect of Section 9(5) of that Act only, from constituting the new form of statutory nuisance.
259. *Subsection (5)* inserts Section 79(7C) of the Environmental Protection Act 1990 which describes what industrial, trade or business premises are relevant industrial, trade or business premises. Certain types of land (including types of farmland and land within a Site of Special Scientific Interest) and certain waters are excluded.

Section 102 Statutory nuisance: lighting

260. **Section 102** amends section 79 of the Environmental Protection Act 1990 so as to provide that the statutory nuisances listed in that section include “artificial light emitted from premises so as to be prejudicial to health or a nuisance”. This has the effect of subjecting nuisance lighting to the statutory nuisance regime in Part 3 of the Environmental Protection Act 1990.
261. *Subsections (3) to (6)* make provision about exempting artificial lighting emitted from certain premises from constituting a statutory nuisance: such premises include those occupied for defence purposes, various transport-related premises, and prisons.
262. Section 79(8) of the Environmental Protection Act 1990 refers to existing arrangements under which a port health authority has responsibility for dealing with some statutory nuisances. *Subsection (7)* has the effect of excluding nuisance lighting from these arrangements.

Section 103 Sections 101 and 102: supplementary

263. **Section 103** amends section 80(8) and section 82(10) of the Environmental Protection Act 1990 so that the defence of having used best practicable means to prevent, or counteract the effects of, a statutory nuisance will only be available for either of the new statutory nuisances if the nuisance arises on industrial, trade or business premises, and, in the case of nuisance lighting, if the nuisance arises because of lights used to illuminate an outdoor relevant sports facility, that is to say a facility used for a relevant sport. The Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales, are given a power to designate by order which sports are relevant sports.

Pollution

Section 104 Contaminated Land: appeals against remediation notices

264. **Section 104** amends the arrangements for appeals against remediation notices which are served under section 78E of Part 2A of the Environmental Protection Act 1990 (contaminated land).
265. The section amends section 78L to provide that the person on whom a remediation notice is served by a local authority in England may appeal to the Secretary of State, and in Wales to the National Assembly for Wales. This replaces the previous arrangement in section 78L under which magistrates’ courts considered appeals where the notice had been served by the local authority, and the Secretary of State considered appeals where the notice had been served by the Environment Agency. The section will therefore provide a single appellate authority for remediation notices under Part 2A, whether served by the local authority or the Environment Agency.
266. Appeals to the Secretary of State and the National Assembly for Wales are heard by Inspectors appointed for the purpose. Cases may be decided by the Inspector, or “recovered” for decision by the Secretary of State or the National Assembly for Wales on the basis of the Inspector’s report

Section 105 Offences relating to pollution etc: penalties on conviction

267. **Section 105** raises the penalties available to the courts for offenders found guilty of offences under paragraph 25 of Schedule 1 to the Pollution Prevention and Control Act 1999. These offences relate to, for example, contravention of the requirement for a permit to operate an installation or mobile plant, failure to comply with or to contravene a condition of a permit and failure to comply with the requirements of an enforcement notice or a suspension notice.

*These notes refer to the Clean Neighbourhoods and Environment
Act 2005 (c.16) which received Royal Assent on 7 April 2005*

268. This section increases the maximum fines available on summary conviction from £20,000 to £50,000.
269. *Subsection (2)* raises the maximum sentence available on summary conviction from six to twelve months, in line with a change made by section 154(1) of the [Criminal Justice Act 2003 \(c.44\)](#).