

**EXPLANATORY MEMORANDUM TO
THE STREET LITTER CONTROL NOTICES (ENGLAND) (AMENDMENT)
ORDER 2007**

2007 No.1524

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends the Street Litter Control Notices Order 1991 by extending the prescribed commercial and retail premises in respect of which a Street Litter Control Notice may be issued, to include premises used wholly or partly for sale of food or drink for consumption on the premises.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Section 93 (1) of the Environmental Protection Act 1990 allows a principle litter authority (a local authority except a county council), with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, to issue notices ("Street Litter Control Notices") imposing requirements on occupiers of premises in relation to such litter or refuse.

4.2 Section 94 (1) of the same Act allows the Secretary of State by order to prescribe the descriptions of commercial or retail premises in respect of which a Street Litter Control Notice may be issued.

4.3 The descriptions are set out in the Street Litter Control Notices Order 1991 (S.I. 1991/1324).

4.4 The Street Litter Control Notices (England)(Amendment) Order 2007 amends the 1991 Order so that Street Litter Control Notices can be issued in respect of premises used wholly or partly for the sale of food or drink for consumption on the premises.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In February 2007, Government consulted on “Proposed amendment of Sections 93 and 94 of the Environmental Protection Act 1990 and the Street Litter Control Notices Order 1991 (S.I. 1991/1324)”. This consultation ended on 8th May.

7.2 Street Litter Control Notices (SLCNs) give local authorities the power to tackle street litter generated further to activities on adjacent premises. The legislation enables local authorities to serve SLCNs requiring businesses to clear up litter and implement measures to prevent land from becoming defaced again. The list of premises for which local authorities may issue notices is set out in the Street Litter Control Notices Order 1991. Notices may be served for any type of litter that is causing defacement of the street, including smoking related litter.

7.3 SLCNs should only be used after a local authority has attempted and failed to secure a partnership approach to litter problems outside of relevant premises.

7.4 The proposal consulted on was an extension to the types of premises currently falling within the scope of the SLCN provisions (typically, though not exclusively, fast food outlets, banks with ATMs, lottery retailers and stalls) to allow SLCNs to also be used in respect of litter generated from all pubs, bars, cafes, restaurants and other eating and drinking venues, outside which smoking-related materials and other types of litter may be dropped in the street by customers. This would give local authorities the power to place greater responsibility onto the occupiers or owners of these premises, where there is a problem, to clean-up cigarette butts and other dropped materials in the area immediately around them, and/or install appropriate disposal facilities.

7.5 The consultation also sought views on extending the list of premises to also allow SLCNs to be used against all office premises. However, this cannot be taken forward at this time as this will require changes to both primary and secondary legislation. It is intended to identify an appropriate Bill for this to be progressed at the earliest opportunity.

7.6 The consultation was supportive of both of the proposals, outlined above.

7.7 The reason for making the amendment to the Street Litter Control Notices Order 1991 is so that the provisions can be applied to all eating and drinking venues and allow the provisions to come into force alongside the commencement of the smokefree legislation in the Health Act 2006 on 1st July.

7.8 Smoking related litter has been identified by the Local Environmental Quality Survey of England as one of the most prevalent types of litter. There is a real risk that this will increase following the introduction of the smokefree legislation in England and as people go “outside” to smoke. By extending the SLCNs provisions we are providing local authorities with a practical tool to tackle this blight. However, the extended provisions are not limited to smoking related litter.

8. Impact

8.1 A draft Regulatory Impact Assessment was prepared for the consultation. The consultation did not identify any new significant costs. The Regulatory Impact Assessment has been updated accordingly.

9. Contact

Andrew Osborne at the Department for Environment, Food & Rural Affairs, tel: 0207 238 2013 or e-mail: andrew.osborne@defra.gsi.gov.uk, can answer any queries regarding this Order.

Final Regulatory Impact Assessment

1. Title of Proposal

Amendment of sections 93 and 94 of the Environmental Protection Act 1990 and the Street Litter Control Notices Order 1991 (S.I. 1991/1324).

2. Purpose and Intended Effect

2.1 Objective

The objective of this proposal is to reduce smoking related litter on the streets and therefore help in the creation and maintenance of clean, safe and green neighbourhoods and public spaces.

2.2 Background

Sections 93 and 94 of the Environmental Protection Act 1990 give local authorities the power to issue Street Litter Control Notices on premises that have a frontage on a street, and outside which litter or refuse is causing defacement of the land.

Section 93(1) states that ‘A principal litter authority other than an English county council...may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue Notices (“Street Litter Control Notices”) imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94”.

The term ‘principal litter authority’ is defined in section 86(2) of the Environmental Protection Act 1990, therefore, the following authorities have the power to issue Notices under this legislation:

- District councils
- Unitary authorities
- London borough councils
- The Common Council of the City of London
- The Council of the Isles of Scilly
- County Boroughs (in Wales).

Section 93(2) states that the Notices must be served on the occupier of the premises, or, if the premises are unoccupied, on the owner of the premises.

A number of criteria must be satisfied before a Notice can be issued:

1. The premises must have a frontage on a street (section 93(2)).
2. The authority must be satisfied that **at least one of the following** criteria applies (section 93(2)):
 - i. There is **recurrent defacement** by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises, or

- ii. The condition of any part of the premises which is open land in the vicinity of the frontage is, and if no Notice is served is likely to continue to be, **detrimental to the amenities of the locality** by reason of the presence of litter or refuse, or
- iii. There is produced, as a result of the activities carried out on the premises, quantities of litter or refuse of such nature and in such amounts as are **likely to cause the defacement** of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises.

3. The Notices can only be issued in respect of certain types of premises. Section 94(1) provides a power for the Secretary of State to prescribe, by Order, 'the descriptions of commercial or retail premises in respect of which a Street Litter Control Notice may be issued'. This power has been exercised in the Street Litter Control Notices Order 1991 (SI 1991/1324) (see http://www.opsi.gov.uk/si/si1991/Uksi_19911324_en_1.htm), and subsequently, the Street Litter Control Notices (Amendment) Order 1997 (SI 1997/632) (see <http://www.opsi.gov.uk/si/si1997/19970632.htm>).

There is no restriction in the 1991 Order (as amended) on the type of litter for which the provisions may be used, but the current list of premises is directed at dealing with food and drink packaging and other litter caused by eating 'on the go' as well as litter from cash points and lottery tickets dropped outside shops.

Government has issued guidance on the legislation, and this is available from www.defra.gov.uk/environment/localenv/legislation/cnea/litter-refuse.pdf. The guidance includes specific advice on standards of compliance for Street Litter Control Notices at Annex A (pages 51-2). These standards relate to the four grades of cleanliness set out in the 'Code of Practice on Litter and Refuse' (see www.defra.gov.uk/environment/localenv/litter/code/index.htm) and illustrated below. The guidance advises that 'A...Street Litter Control Notice can only be used where ...quantities of litter and refuse are likely to lead to defacement. The cleanliness of the land will therefore have fallen to **at least a Grade C**', in which there is widespread distribution of litter and/or refuse with minor accumulations.

Cleanliness grades as set out in the ‘Code of Practice on Litter and Refuse’

Grade A – No litter or refuse



Grade B - Predominately free of litter and refuse apart from some small items



Grade C - Widespread distribution of litter and/or refuse with minor accumulations



Grade D - Heavily affected by litter and/or refuse with significant accumulations



Land to which the Notice may apply

Section 93(3) states that, in addition to identifying the premises and grounds under which it is issued, the Notice must ‘specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street’. Under section 94(1), the Secretary of State has the power to prescribe descriptions of land, and the maximum area that can be included. Again, this is provided in the 1991 Order and can be:

- Land in the open air which is part of the premises;
- Part of a street, other than the carriageway when it is open to vehicles;
- Relevant land of a principal litter authority; or,
- Land under the direct control of any other local authority.

It also states that the land specified must be within 100 metres of the premises, except in the case of automated teller machines, in which case it must be within 10 metres.

Requirements of the Notice

The requirements that may be imposed by a Notice are set out in section 94(4). They must be ‘reasonable’ and relate to the clearance of litter or refuse from the specified area. In particular, they may require the provision or emptying of bins or for litter to be cleared up at specified times or intervals. The guidance published by Defra on these provisions states, at paragraph 6.13 that ‘In order to be ‘reasonable’ local authorities will need to consider the health and safety implications and cost effectiveness of any requirements they are proposing to make, as well as their own role in carrying out street cleansing’.

Section 94(6) sets out the mechanism for appealing against a proposed Notice. The local authority is required to inform the person on whom the Notice is to be served and allow him/her a period of 21 days in which to make any representations. The local authority must take any such representations into account in deciding on the content of the Notice and its issue. Subsection (7) allows a person on whom a Notice is served to appeal to the magistrates’ court against the Notice.

Scope of the existing and proposed measures

The legislative framework therefore sets out very specific circumstances in which Street Litter Control Notices may be used. They can only be served on a premise that has a frontage on a street and outside which litter is creating a serious impact on the condition of that area, so as to cause defacement or to be detrimental to the amenity of the locality. The guidance issued by Defra on the provisions states that ‘local authorities should work in partnership with others to resolve the problem of street litter and seek to remedy it, where possible, through joint working and good management practice’, therefore Street Litter Control Notices are suitable for use only where such attempts at joint-working have been ineffective. In specifying ‘reasonable requirements’ in the Notice local authorities must consider their own duties to clear litter and refuse from ‘relevant land’, they must also take into consideration any issues of health and safety or security that may be raised by the occupier (or owner).

If local authorities were able to issue Street Litter Control Notices in respect of offices, pubs, bars, cafes, restaurants and other eating and drinking venues, not currently covered by the provisions, it would give them the power to place greater responsibility onto the occupiers or owners of those premises to clean-up the smoking-related litter in the area immediately around them, and/or install appropriate disposal facilities, where there is a significant problem

with this form of littering and it is causing defacement of the area. This proposal is consistent with recent changes introduced by the Clean Neighbourhoods and Environment Act 2005 which follows the polluter pays principle, by improving the powers available for local authorities to take action against those caught dropping litter as well as requiring businesses and landowners to play their part in keeping land and premises clean and in clearing-up.

3. Consultation

Informal consultation has been carried out with Other Government Departments, the Local Government Association and local authorities. ENCAMS has also recently carried out a consultation on the establishment of a Cigarette Litter Action Group to look at approaches to tackling smoking-related litter more widely.

The proposals were also subject to a full 12-week public consultation.

The consultation, which closed on 8th May 2007, was supportive of both options 2 & 3, outlined below.

Of the 45 responses received, 36 supported the extension of the Street Litter Control Notice provisions, with 7 against. The majority of the negative responses were from the licensed industry sector, who felt that they were being singled out and that education and enforcement against the offender was more appropriate. The other concern raised was the ability of a Street Litter Control Notice to be applied up to a distance of 100 metres from a premise, which was considered disproportionate. In response, it is argued that they are not being singled out as the powers already exist for a range of other premises and mobile vendors and that when the opportunity presents itself to extend the powers to offices this will be pursued. Further, enforcement powers do exist and are being used; and education and campaign work is already ongoing. On the 100 metre issue, this is a maximum and guidance for local authorities will be updated to remind them to be “reasonable” and only apply a Street Litter Control Notice to an appropriate area of relevant land. This will be particularly relevant where there are adjoining, for example, licensed premises.

The consultation did not identify any new significant costs that were not identified in the draft RIA.

4. Options

Option 1 – No change, continue to allow local authorities to issue Street Litter Control Notices only in respect of premises currently listed in the Street Litter Control Notices Order 1991 (as amended).

Option 2 – Extend the list of premises to allow Street Litter Control Notices to be issued in respect of all pubs, bars, cafes, restaurants and other eating and drinking venues outside which smoking-related materials and other types of litter may be dropped by customers. This would be achieved through an amendment to the Street Litter Control Notices Order 1991.

Option 3 - Extend the list of premises to include those premises listed in option 2 and all office premises. This would require the following changes:

(i) Section 94(1)(a) Environmental Protection Act 1990 states that the Secretary of State may prescribe 'descriptions of **commercial or retail premises** in respect of which a Street Litter Control Notice may be issued'. To allow Notices to be issued in respect of any type of office

premises, it is proposed to widen this definition to include all types of premises except exclusively residential premises.

(ii) A subsequent amendment to the premises listed in the Street Litter Control Notices Order 1991 would then be made to specify that Notices may be issued for any type of office premises.

(iii) Section 93(2) Environmental Protection Act 1990 states that the local authority may serve a Street Litter Control Notice 'on the occupier or, if the premises are unoccupied, on the owner of the premises'. Since office buildings may be under multiple occupancy, it is proposed to make an amendment specifying that Notices may be issued on the owner of any premises where there is multiple occupancy regardless of whether the premises are unoccupied. In these circumstances the owner would be in a position to put in place any requirements stated in the Notices, such as the requirement to make provision for disposal facilities, signage or additional street cleaning, and to transfer associated costs onto the relevant occupiers through, for example, service charges for the building. Non-compliance would then also be enforceable against the owner.

These changes are proposed for England only.

Government's preferred option is to introduce both the amendments contained in options **2 and 3**, however, since option 3 requires changes to primary as well as secondary legislation, if primary legislation cannot be brought forward in time for the commencement of the smokefree provisions of the Health Act 2006, practicalities may deem that initially only option 2 is progressed by July 2007 followed by the extension to offices as soon as a suitable legislative opportunity arises.

5. Costs and Benefits

5.1 Sectors and groups affected

The key sectors and groups affected are:

- (i) Local authorities who might issue additional Street Litter Control Notices;
- (ii) Businesses which could be affected by additional Street Litter Control Notices; and
- (iii) The public, who are suffering from litter on the street.

Option 1 – For the purpose of this RIA the baseline is the existing form of Street Control Litter Notice as described in Section 4 above. Currently, when smoking-related materials are dropped on the street outside offices and eating and drinking venues, local authorities are required to clear up the litter under section 89 of the Environmental Protection Act 1990.

At present Street Litter Control Notices can only be placed on the following establishments:

- (a) premises used wholly or partly for the sale of food or drink for consumption **off** the premises,
- (b) premises used wholly or partly for the sale of food or drink for **consumption on a part of the premises forming open land adjacent to the street, and**
- (c) **other commercial or retail businesses listed in the Street Litter Control Notices Order 1991 (as amended) which have a frontage onto a public street, such as a service station or entertainment venue.**

For all other eating and drinking premises, and for all office premises, local authorities are solely responsible for clearing litter from the street and providing any disposal facilities.

Option 2 – This option would extend the number of businesses covered by the Street Litter Control Notice provisions as described in Option 1 to include **any** eating or drinking venue with a frontage on the street which has a **recurrent defacement problem** from litter. This would extend the scope of Street Litter Control Notices to include eating and drinking venues that sell food or drink for consumption exclusively on the premises.

Option 3 – This option would extend the number of businesses covered by the Street Litter Control Notice provisions as described in Option 2 to include the occupier or owner of office buildings with a frontage on the street which has a **recurrent defacement problem** from litter.

The costs and benefits of options 2 and 3 are considered together in section 5.2 as their implications are similar for those groups and sectors that would be affected.

5.2 Analysis of Costs and Benefits

All the costs and benefits in this section, in accordance with Cabinet Office guidance, are presented in terms of the impact to society as a whole. Therefore they do not take account of transfers between groups, such as fixed penalty fines or transfers of liability. A relevant issue with this methodology in this case is that it does not highlight the impact of passing the liability associated with keeping an area clean from the local authority to businesses.

This transfer of liability from the local authority to the polluting undertaking, as highlighted previously, ensures that businesses face the correct incentives to employ all cost justified preventative measures. This transfer of liability creates a net benefit to society as new preventative measures are employed to reduce the cleaning costs, as set out below.

Table 1 below presents the estimated annual value of transfers from local authorities to businesses. These figures are based on an annual cleaning cost of around £700 per site (see Option 1 – Costs, below). It should, however, be noted that this transfer does not take into account the potential reduction in cleaning costs, which are estimated to halve the annual cost.

In addition to the transfer of the annual cleaning costs, the annual transfers also include fixed penalty fines which are issued in the event of non-compliance with Street Litter Control Notices (more information is provided in Section 8 – Enforcement of this RIA). This results in a transfer between the businesses and the local authorities.

Table 1: Annual transfers between local authorities and businesses

	Number of Street Litter Control Notices issued per local authority		
	5	10	20
Cleaning costs	£1.2m	£2.4m	£4.7m
Fixed penalty fines	£35,000	£71,000	£141,000

Option 1 – Costs

The total cost of street cleansing to local authorities will rise with any further increases in the amount of smoking-related litter dropped outside premises, as may happen when the indoor restrictions on smoking are enforced. Under the current circumstances, i.e. without the proposed extension of the Street Litter Control Notices, any increase in smoking-related litter would place a greater burden on local authorities to clean-up.

Whilst it is not possible to estimate the potential increase in number of littered sites in the absence of the extension of the Street Litter Control Notice, we have estimated that a single site would impose a clean up cost of around £700 per year¹. If, for example, there were to be one additional site in each local authority, in the absence of the extension of Street Litter Control Notices, this places an additional total annual cost of around £250,000 on local authorities. Increased littering may also incur a cost for businesses and the public if litter accumulates, resulting in a reduction in the quality of the local environment and negative impact on the economy.

As no agreed figures have been released on the likely increase in littering from the indoor smoking restrictions these costs have not been included in the cost benefit analysis.

Option 1 – Benefits

There are a few minor benefits of maintaining the status quo however these benefits are qualitative as they could not be quantified. The identified benefits include:

- No additional costs to local authorities of issuing further Street Litter Control Notices;
- No additional costs to businesses of further cleaning;
- Stability from maintaining the status quo; and
- There would be no costs to make the necessary legislative changes.

Options 2 and 3

Sections 93 and 94 of the Environmental Protection Act 1990 provide local authorities with the power, rather than an obligation, to issue Street Litter Control Notices. Therefore, local authorities or businesses only face increased costs when a decision is made to utilise this power. As Notices can only be issued where there is a significant problem with litter impacting on the quality of the local environment this means that the number of Street Litter Control Notices will be very limited.

An informal survey of 16 randomly selected local authorities was carried out to estimate how many Street Litter Control Notices they were likely to issue per year following the extension of the Notices to include all eating or drinking venues as well as the occupier (or owner) of office buildings. The analysis of costs and benefits presented below is based on the responses from this survey. However, it must be noted that as only a sample of local authorities in England were consulted significant uncertainties exist around the results. Therefore the figures presented below should be considered as illustrative.

The survey found that on average 1–2 Street Litter Control Notices would be issued by local authorities per year with a maximum suggested level of 15. To address the uncertainties around this figure, a range of 5-20 Notices per local authority per year has been considered.

¹ This figure is based on such sites requiring 20 minutes cleaning per day of litter at the current minimum wage of £5.35 per hour.

The cost benefit analysis is presented in two formats. The summary section presents the total costs and benefits for all the Street Litter Control Notices ² issued by all 354 local authorities per year. The detailed section presents the costs and benefits to a local authority, business and the public of a single Street Litter Control Notice.

Costs of options 2 and 3

Our analysis suggests that the total impact of these two extensions would impose relatively small costs on both local authorities and businesses. Table 2, below, presents the total costs of the regulation in the UK per annum based on the resource costs to businesses and the administrative costs to local authorities.

The costs presented below do not consider the impacts of issuing a fixed penalty notice to non-compliant businesses as this is a transfer payment between businesses and local authorities. Depending on the number of fixed penalty notices issued per year, these costs to businesses could range between £35,000 - £142,000.

Table 2: Estimated total costs by number of Street Litter Control Notices issued per local authority per year

Number of Street Litter Control Notices issued per local authority per year	Total cost per year to Local Authorities in England	Total Cost to businesses in England over 5 years³	Total Cost of regulation for Street Litter Control Notices issued in a year (excluding enforcement costs)
5	£800,000	£250,000 - £560,000	£1.1million - £1.4million
10	£1.6million	£500,000 - £1.1 million	£2.1million - £2.7million
20	£3.2million	£990,000 - £2.3million	£4.2million - £5.3million

Cost to local authorities of a single Street Litter Control Notice

Estimates obtained from the survey of local authorities suggest that the cost of issuing Notices, including investigation, appeal, follow-up and administration is around £450 per Notice.

Two key conservative assumptions have been made to ensure that the costs to local authorities are likely to be over estimated in this calculation. These assumptions have been made to ensure that the results of the cost benefit analysis is pessimistic. These assumptions are:

² Assuming each local authority issues 5, 10 or 20 Street Litter Control Notices per year, the total number of Street Litter Control Notices issued across UK is 1,770, 3450 or 7080 per year.

³ Costs to business are considered over a 5 year period to be consistent with the benefits estimation that makes the conservative assumption only to consider the benefits over this period.

- That an Street Litter Control Notice will only last for 5 years and therefore administrative costs for local authorities would be incurred every 5 years for the duration of a Street Litter Control Notice ; and
- That businesses do not voluntarily comply with the request before a Street Litter Control Notice has been issued, thereby reducing the cost imposed on local authorities.

However, in addition to the administration costs of issuing the Street Litter Control Notices, local authorities will face enforcement costs should businesses not comply with the Street Litter Control Notice. However due to the unavailability of costs to local authorities of enforcing a Street Litter Control Notice in courts, this is not presented in the cost section of this RIA. However, it is likely that the level of compliance is going to be high⁴ and therefore the court costs will be low. Additionally, the Clean Neighbourhoods and Environment Act 2005 introduced the option of issuing fixed penalty notices for non-compliance, from which local authorities may retain the receipts for further enforcement. Such fines act as a transfer rather than a real cost as although the penalties would appear as costs to the business they are a revenue to local authorities.

Cost to businesses

When local authorities issue Notices to businesses, the businesses have a choice of complying with the Notices or challenging the Notice. It is assumed that 80%⁵ of businesses will comply with the Street Litter Control Notice. The remaining 20% will be issued with a fixed penalty notice. When faced with a fixed penalty, businesses may either choose to pay the penalty or pursue the matter in the courts. The Clean Neighbourhoods and Environment Act 2005 assumed that 75 – 80% of business would choose to pay the fine and subsequently clean up while the remainder would pursue a matter in the courts. For the purpose of this RIA, we have assumed the upper bound i.e. 80% compliance rate of the fine therefore 96% of the total businesses face cleaning costs due to this measure while 4% challenge the Notice in courts.

Cost to businesses if they comply with Street Litter Control Notices

Businesses who comply with the requirements of the Street Litter Control Notices have to ensure that the defacement does not occur. The Notice may require them to achieve this through preventative measures, such as installing smoking bins outside their premises, or through additional cleaning of litter and refuse from publicly accessible land within a specified distance of the premises (100m). This transfers the cleaning cost from the local authority to the source of the litter.

Installing smoking bins

Installing disposal solutions would impose a front loaded one-off cost on business, with smoking bins ranging from around £30 to £100⁶. The size and number of bins required would vary depending on the premises and number of smokers using it. For simplicity this RIA assumes that a single bin would suffice. However, where sites require more than one bin we may expect the potential benefits to be proportionally increased. Maintaining and emptying

⁴ The compliance rate is estimated at around 95% based on compliance data presented in the “cost to business”.

⁵ This is based on the assumption made in the Clean Neighbourhoods and Environment Act 2005 RIA (see www.defra.gov.uk/environment/localenv/legislation/cnea/index.htm#consult) of an 80% compliance rate for the Street Litter Control Notice.

⁶ Figures supplied by ENCAMS

bins is an ongoing but minimal cost (assumed at between 5 and 10 minutes work a week), and in some cases local authorities will empty wall-mounted bins outside businesses as part of their cleansing service.

Cost to businesses if they do not comply with Street Litter Control Notices

In the event of non-compliance with a Street Litter Control Notice, a local authority can issue a fixed penalty notice to the occupier (or owner) of the premises, with recourse to the courts if it is unpaid. For those who do comply with the fixed penalty notice, they pay the fine of £100 as well as complying with the Street Litter Control Notice. However, as the local authorities are entitled to the receipts of these fines, it is a transfer payment between the businesses and local authorities i.e. the fixed penalty notices appear as costs to businesses and benefits to local authorities.

The cost to businesses if they choose to pursue the matter in the courts will depend on the probability of the courts issuing a fine and the level of the fine and is therefore not considered here. The RIA for the Clean Neighbourhoods and Environment Act 2005 has an example of the costs that might be borne by businesses in the event of them being taken to court. “In 2002 there was only a single case of prosecution in a magistrates’ court for failure to comply with a Street Litter Control Notice, with an associated fine of £700.” However, this may underestimate the true cost as it does not include the time and resource costs to businesses of pursuing the matter in the courts.

Benefits of options 2 & 3

Improving local authorities’ power to deal with smoking-related litter may have wide-ranging economic, environmental and social benefits. However, there is a significant lack of relevant information available. These gaps include both monetary values to be applied to benefits (i.e. the disamenity value of litter) and the quantification of benefits (i.e. number of increased tourists due to reduced litter).

The illustrative annual benefits of this measure based on the number of Street Litter Control Notices issued to businesses per local authority is presented in Table 3, below. The range of the number of Street Litter Control Notices issued per year for all local authorities all over UK is between 1,770 – 7,080, although as set out previously we only expect around 1,000 to be issued.

Table 3: Total benefits by number of Street Litter Control Notices issued per local authority per year

Number of Street Litter Control Notices issued per local authority per year	Reduction in cleaning costs	Reduced sightings of litter	Reduced fire costs	Total benefits for this measure
5	£0.4million - £0.6million	£1.1million	£0.1million - £0.2 million	£1.5million - £1.8million
10	£0.8million - £1.2million	£2.1million	£0.1million - £0.2 million	£3.0million - £3.5million

20	£1.5million - £2.4million	£4.3million	£0.1million - £0.2 million	£5.8million - £6.8million
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This evaluation presents the benefit information in two parts, the first part sets out the benefits which have been quantified and monetarised and the second describing the qualitative benefits.

It must be noted that the quantified benefits have been estimated making conservative assumptions where data is not available. The key assumption being that the benefits associated with issuing a Street Litter Control Notice only lasts for 5 years. In reality Street Litter Control Notices are not time limited and therefore the actual benefits are likely to be greater than presented here. All the other assumptions are described in detail with justifications below.

Quantified and monetarised benefits

The three benefits which have been monetarised are:

- Public benefits from reduced cigarette litter;
- Reduced cleaning costs from preventative measures; and
- Lower fire damage risk.

Public benefits from reduced cigarette litter

Significant amounts of cigarette litter, as would be necessary to consider a Street Litter Control Notice, are unsightly. As such it imposes disamenity costs on anyone who observes such a site. While this cost is reduced by local authorities' efforts to clean these sites the recurrent nature of litter in such sites means that there will be periods between cleaning where costs are imposed on the public. By placing the responsibility on the establishment (i.e. pubs/offices) outside of which there is this recurrent defacement, this disamenity cost should be reduced as more appropriate cleaning techniques and preventative measures are employed.

Unfortunately, data is not currently available to fully quantify the value of this potential benefit. Therefore this section has made a number of very conservative assumptions to quantify the likely benefits.

For the purpose of this illustrative example, we made the following assumptions:

- The disamenity cost imposed per viewing is 2p⁷;
- The site is viewed⁸ 30 times per day;
- The lifetime of a Street Litter Control Notice of 5 years⁹; and
- Duration where disamenity is incurred is 4 days a week¹⁰.

Based on these assumptions the disamenity value over five years is £626 per site.

⁷ A valuation of 2p is unlikely to be a over estimate as research shows that clean streets are regarded as being in the top 5 most important issues to people's quality of life. There is also a growing body of evidence that well-maintained environments free from litter and refuse can increase inward investment and attract workers and new residents to an area.

⁸ It may be that the viewings of the litter may be made by different people or by the same person. We assume here that there is no diminishing marginal disutility per viewing such that each consecutive viewing to an individual causes the same level of disamenity.

⁹ The lifetime of 5 years is considered to be equal to the lifetime of the cigarette bin, which may be put outside businesses to reduce litter.

¹⁰ Based on local authority cleaning occurring once a week and after cleaning it takes 3 days for the litter to build up to a level which causes public disamenity.

Reduction in cleaning costs of cigarette litter

Local authorities would have to employ significantly more advanced methods of cleaning requiring expensive technology or increased man power, because of the difficulty of cleaning up cigarette filters from grates and cracks in street surfaces. The cost of cleaning however can be reduced substantially through simple preventative measures. For example, the provision of dedicated cigarette bins can reduce the resultant litter substantially. A survey for the Department of Environment and Conservation (New South Wales) found that over 80% of smokers said they would bin their butts if suitable bins were available.

The illustrative example below shows the impact of a Street Litter Control Notice in reducing costs associated with cigarette litter. The assumptions made for this example are:

- It takes 30 minutes to clean a littered site;
- Cleaners are paid the minimum wage of £5.35 per hour;
- New bin reduces cleaning time by between 30% and 50%¹¹; and
- The lifetime of a bin and Street Litter Control Notice is 5 years.

Based on the assumptions above, the reduction in the cost of cleaning a littered site is between £209 and £358. Given the scale of these savings and the relative costs of a bin we would expect the majority of businesses to choose to install specialised cigarette bins.

Reduction in fires from cigarette litter

Finally, cigarette litter can be a significant contributor to fire risk. The careless disposal of cigarettes can start fires while the accumulation of cigarette litter may also be a contributory factor in fires ignited from other sources where it provides kindling.

Data from the Department for Communities and Local Government (DCLG) only records fires where the careless disposal of a cigarette was involved where either property is damaged; there are casualties; or more than five fire appliances are involved. These statistics show that between 2000 and 2004 on average just over 24 primary fires were started by the careless disposal of cigarettes¹². It also shows that over this period the number of fires started in this manner had increased significantly from just 10 in 2000 to 26 in 2004. This is against a background where the total number of fire incidents has fallen over the same period by around 4.7%¹³. Therefore we may expect this number to rise in the future especially given the implementation of the indoor smoking restrictions.

No directly relevant estimates are available for either the cost of such incidences or the likely change resulting from these proposals. In order to provide a quantitative benefit for this paper we have assumed that:

- an average cost of fire of £2,500¹⁴; and
- That the proposal will reduce the number of incidences by between 5 and 10 cases per year¹⁵.

¹¹ Based on an 80% reduction in the level of litter.

¹² Source: DCLG Ref: 2006160(0004).sas 19 JULY 2006

¹³ The Economic cost of fire: estimates for 2004 (2006) available from www.dclg.gov.uk.

¹⁴ This is used on the basis of the true estimated costs of Domestic, Commercial and Public sector fires which are estimated to cost £25,000, £44,000 and £41,000 respectively

¹⁵ This is based on Street Litter Control Notices being served on the areas with the greatest accumulation of litter and therefore the highest fire risk.

In total these assumptions estimate a benefit each year in the region of £25,000 to £38,000 per annum, or between £0.1million and £0.2million over the assumed 5 year duration of a Street Litter Control Notice.

Non quantitative benefits of options 2 and 3

In addition to the benefits quantified above, there are other benefits which have not been quantified or valued. The ability for local authorities to demand greater co-operation from businesses may result in a number of improvements for the private and public sectors. They are briefly described below:

Private sector benefits

Reduced cigarette litter has the additional benefits of improving the image of the neighbourhood and therefore attracting more tourism and therefore increased spending in the area. Reduction in litter from an area can have an effect on individual behaviour. As individuals are more likely to throw litter to an already defaced place and less likely to throw litter in a dirty area, therefore a cleaner area is likely to stay cleaner for longer. Clean streets and neighbourhoods have wider benefits to businesses in the area as it improves business image and encourages increased investment in the local business.

Public sector benefits

In addition to a reduction in cleaning costs for local authorities and reduction in fire hazards, these Notices are likely to have other benefits as well. A cleaner neighbourhood will also lead to a reduction in fear from anti-social behaviour. Clean streets and neighbourhoods also lead to an increased sense of civic pride and improved community interaction. Overall, a cleaner neighbourhood will lead to a better quality of life for the individuals living in that area.

Therefore, it is evident that in addition to the benefits which have been valued and quantified there are a large number of benefits from this proposal which have not been valued. So, a combination of the benefits of the measure will quite evidently be higher than the costs of the measure.

6. Small Firms Impact Test

All businesses with fewer than 250 full-time employees are regarded as being small businesses for the purposes of this RIA. Many businesses affected by this proposal are likely to be small firms.

In order to inform this assessment, an email was circulated to just over 200 small firms seeking their views on the proposal. Responses were received from 9 of the businesses that were contacted. The main issues raised by these respondents were as follows:

- Concern about potential costs that may fall on small businesses as a result of this proposal.
- The need to address other flytipping and litter problems in the area that may have a negative impact on local amenity and businesses.
- Action should be taken against individuals responsible for dropping the litter rather than businesses.

This section deals with these, and other likely, impacts on small businesses resulting from this proposal.

The potential costs that may be incurred on small businesses as a result of the extension of the Street Litter Control Notice provisions include the installation of litter bins (portable or wall-mounted), ash trays and/or requirement to clear up litter from outside the premises. They would also be responsible for emptying any litter bins that are installed, unless arrangements for emptying are made with the local authority. It is, however, unlikely that such costs would jeopardise the viability of a small business, given that the estimated total cost of a 5 year Street Litter Control Notice on a business is estimated at between £150 and £330.

Section 5.2 of this RIA outlines the likely benefits associated with the proposal. Weighed against the potential costs are the private sector benefits to be gained from cleaner streets resulting in an improved business image and increased investment.

The current proposal is to extend an existing regulation; it does not involve the introduction of any new powers. Government expects local authorities to work in partnership with local businesses first to tackle the problem of street litter, using Street Litter Control Notices only as a last resort. Guidance on the legislation sets out the level of defacement that would be required in order to justify a Notice being issued. The cleanliness of the land would need to have fallen to at least a grade C (widespread distribution of litter and/or refuse with minor accumulations) in accordance with the Code of Practice on Litter and Refuse before a local authority considers using the Street Litter Control Notice powers. These gradings are illustrated in section 2.2 of this RIA.

Street Litter Control Notices can already be issued to small businesses covered under option 1 of this RIA, such as fast food takeaways, bakeries, newsagents and local grocery stores. In 2001-2 and 2002-3 Defra sent out a questionnaire to local authorities to monitor the use of legislation under Part 4 of the Environmental Protection Act 1990. This showed that very few Street Litter Control Notices had been issued by local authorities - only 7 out of 238 respondents had made use of the provisions in 2001-2 and 6 out of 234 in 2002-3, however, it should be noted that this was prior to improvements to the legislation being brought in under the Clean Neighbourhoods and Environment Act 2005 in April last year.

Local authorities and businesses have been supported in tackling the problems associated with food and drink-related litter through the development of *Reducing Litter Caused by 'Food on the Go' – A Voluntary Code of Practice for Local Partnerships* which was launched by Defra in November 2004. This document provides a suggested framework to help all concerned take some responsibility to reduce the litter and waste that comes from consuming and selling 'food on the go'. By following the principles set out in this code, local authorities and businesses can avoid the need for a Street Litter Control Notice to be issued as they will be able to identify and agree actions to be taken to prevent and remedy litter problems linked to a particular premises. These principles will therefore already be familiar to local authorities and businesses, and may similarly be applied to help resolve smoking-related litter problems. The facilitation of partnership solutions will also be a key element of the Cigarette Litter Action Group recently set up by ENCAMS.

Street Litter Control Notices form one component of a package of legislative tools available to local authorities for dealing with the litter problems in their area, including the power to issue fixed penalty notices to those individuals caught dropping litter. Under the Clean Neighbourhoods and Environment Act 2005, new powers have been provided to enable local authorities to take more immediate and effective action to improve the quality of the local environment. New measures introduced in April last year now enable local authorities and other enforcement agencies to take swifter action against those responsible for the

commission of environmental offences, and to require the clear-up of litter and fly-tipping. Land and property owners are expected to take some responsibility for the condition of their land and property and the impact it has on the local area, but only at the same time as the behaviour of those committing the offences is tackled.

Local authorities would be expected to inform the businesses in their area of any changes to the legislation. Defra will update its guidance on *Litter and Refuse* (Part 4 of the Environmental Protection Act 1990) to reflect this and state in the revised version that local authorities must include information about how they intend to use Street Litter Control Notices in their enforcement strategies, and ensure this is widely publicised both to businesses and the local community.

7. Competition Assessment

There are no perceived competitive or competitor impacts resulting from this measure.

8. Enforcement and Sanctions

If a business refused to comply with the Notice, prior to measures in the Clean Neighbourhoods and Environment Act 2005 coming into force, the local authority had to apply to a magistrates' court for an Order to require the person to comply with the Notice. Instead, as of April 2006, it is immediately an offence to fail to comply with the requirements of the Notice so that a prosecution may be sought. A person found guilty of this offence may be given a fine of up to a maximum level 4 (currently £2,500) in a magistrates' court. Fixed penalty notices may now also be issued as an alternative to prosecution by an authorised officer of a principal litter authority. Under section 94A(4)(a) Environmental Protection Act 1990 the local authority may set the level of the fixed penalty, within a range of £75 - £110 prescribed by the Secretary of State in regulations. Alternatively, a standard amount of £100 applies.

Action can only be taken for the failure of the occupier or owner to carry out measures detailed in the Notice. For example, if a business is required to install a bin and does so, it cannot be held responsible for the failure of individuals to use it. Local authorities should utilise their powers under sections 87 and 88 of the Environmental Protection Act 1990 to enforce the offence of dropping litter.

As mentioned in the costs and benefits analysis of this RIA, there is a cost transfer associated with enforcement action from businesses to local authorities. The amount of this transfer will depend on the level of compliance of businesses with Street Litter Control Notices. It is assumed there will be a compliance rate of 80%⁸ and the remaining 20% of businesses will be issued with a fixed penalty notice. Based on the default level of £100 for these fixed penalty notices, the total transfer from businesses to local authorities would be in the range of £35,000 to £142,000 with a central estimate of £71,000 based on 5 Street Litter Control Notices being issued per authority per year.

However, of those businesses issued with a fixed penalty notice there will be a number that choose not to pay the fixed penalty and will instead be subject to prosecution in the magistrates' court. We assume that 75-80% of businesses will pay the penalty rather than face prosecution. For the 15-20% of businesses issued with a fixed penalty notice that decide not to pay it, they may subsequently face a fine in the magistrates' court. The level of the fine awarded may be up to £2,500, but based on figures from actual court proceedings in 2002, a

level of £700 is more likely. Based on the central estimate of 1770 Notices being issued per year, it is expected that 4% of businesses or 71 in total would end up facing these court costs.

9. Monitoring

Levels of smoking-related litter will continue to be monitored through the Local Environmental Quality Survey of England mentioned in section 2.2 above. This survey has been carried out on an annual basis since 2001/2, providing a baseline against which future levels of this type of litter may be assessed.

Additionally, Defra requests information from local authorities on the number of fixed penalty notices issued for environmental crimes on an annual basis. This includes details of the number of unpaid fines and cases of non-payment pursued to the magistrates' court. As of May 2007, data will be collected on all new fixed penalty provisions introduced by the Clean Neighbourhoods and Environment Act 2005, including statistics on fixed penalties issued for failure to comply with a Street Litter Control Notice. Defra will also seek information on the number of Street Litter Control Notices issued by local authorities as part of ongoing monitoring and evaluation of the use and effectiveness of new and amended powers introduced by the Clean Neighbourhoods and Environment Act 2005.

10. Summary and Recommendation

Smoking-related litter is one of the most prevalent forms of litter, and the impending restrictions on smoking in public places is expected to result in an increase in future levels. This proposal would allow local authorities to require the occupiers/owners of offices, pubs, bars, restaurants, cafes and other food and drink venues to play a greater role in dealing with this type of litter problem.

The summary of costs and benefits is presented in Table 4 below:

Table 4 Summary of quantified costs and benefits

Number of Street Litter Control Notices (per local authority per year)	Total cost	Total Benefit	Net Benefit
5	£1.1million - £1.4million	£1.5million - £1.8million	£0.1million - £0.7million
10	£2.1million - £2.7million	£3.0million - £3.5million	£0.3million - £1.4million
20	£4.2million - £5.3million	£5.8million - £6.8million	£0.5million - £2.6 million

The analysis of costs and benefits in this RIA shows that this proposal will result in a net benefit to society overall, since Notices will only be issued in a minority of cases where there is a significant problem with smoking-related litter causing defacement of land on, or in the vicinity, of a street. The costs imposed on both local authorities and businesses would be relatively small and outweighed by the benefits associated with improved amenity, reduced

cleaning costs from preventative measures and reduced fire risk. It is therefore recommended that the amendments contained in both options 2 and 3 are pursued.

11. Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs'.

Signed by the responsible minister

...Ben Bradshaw.....

Date ...23rd May 2007.....

12. Contact

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