

## **THE LOCAL ENVIRONMENT**

### **Introduction**

1. This Note advises local councils of various matters that may affect the local environment and the appearance of the local environment. The main legislation in respect of this area is the Clean Neighbourhoods and Environment Act 2005 (“the 2005 Act”) but other Acts are relevant and are highlighted in this Note. Unless otherwise stated, references to “local authority” do not include local councils.

### **Leaving vehicles for sale on a road**

2. S.3 of the 2005 Act makes it an offence for a person to leave or cause to be left two or more motor vehicles on a road or roads, where the vehicles are left merely in order to be sold. The two or more vehicles must be within 500 metres of each other for the offence to be committed.

### **Repairing vehicles on a road**

3. S.4 of the 2005 Act makes it an offence to carry out “restricted works” to vehicles on a road. “Restricted works” means (a) works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle or (b) works for the installation, replacement or renewal of any such part or accessory. No offence is committed if the restricted works are carried out for non-business purposes or for no gain or reward although this does not apply if the works give reasonable cause for annoyance to persons in the vicinity. The section also excludes from the offence any necessary works following an accident or breakdown.

### **Power to issue fixed penalty notices – vehicles on a road**

4. S.6 of the 2005 Act enables any person authorised by the relevant local authority to issue a fixed penalty notice for the offences in sections 3 and 4 of the 2005 Act of leaving vehicles for sale or repairing a vehicle on the road, offering the offender an

opportunity to discharge any liability for the offence. Subsection (8) fixes the amount of the penalty at £100 which can be amended by order under subsection (9). Under subsection (10) the local authority to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify. S.7 (1) of the 2005 Act provides an authorised officer of a relevant local authority with the power to require the name and address of an offender if the officer proposes to give him a penalty notice under s. 6. S.7 (2) makes it an offence to fail to provide the information asked for or to give inaccurate information.

### **Abandoned Vehicles**

5. S.10 inserts three new sections after s.2 of the Refuse Disposal (Amenity) Act 1978 (“the 1978 Act”) which makes it an offence to abandon a motor vehicle).
6. S.2A gives an authorised officer of a local authority the power to issue a fixed penalty notice in respect of an offence of abandoning a vehicle, offering the offender the opportunity to discharge any liability for the offence, by payment of a fixed penalty to the authority.
7. S.2B enables an authorised officer of a local authority to require the name and address of the person to whom he proposes to issue a fixed penalty notice. A person commits an offence if he gives false or inaccurate details.
8. S.2C enables local authorities to use the receipts from these penalties for the purposes of their functions under the 1978 Act, sections 99 to 102 of the Road Traffic Regulation Act 1984, functions relating to the enforcement of sections 3 and 4 of the 2005 Act and for other functions as are specified in regulations.

### **Notice of Removal of Vehicles**

9. Under s.3 (2) of the 1978 Act if a vehicle is abandoned on private land, a notice has to be served on the occupier of the land. S.11 (2) of the 2005 Act removed the requirement to serve a notice on the occupier of land where the vehicle is on a ‘road’. The definition of ‘road’ is that as described in s.142 of the Road Traffic Regulation Act 1984 and means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes. S.11 (3) of the 2005 Act revoked s.3 (5) of the 1978 Act. This enables local authorities to

remove immediately any vehicle which is in such a condition that they think it has been abandoned.

### **Disposal of abandoned vehicles**

10. S.4 of the 1978 Act removed the requirement to wait for the expiration of a valid licence before being able to remove an abandoned vehicle. This has the effect of allowing any vehicle that is only fit for destruction to be destroyed immediately. In other cases, if the owner either cannot be traced or fails to respond to a notice the vehicle can then be disposed of.

### **Graffiti and Fly-Posting**

11. S.43 of the Anti-social Behaviour Act 2003 (“the 2003 Act”) allows authorised officers to issue fixed penalty notices for the offences of graffiti and fly-posting, and set the amount payable for a graffiti or fly-posting fixed penalty notice at £50. S.28 of the 2005 Act enables a local authority to vary the fixed penalty amount for a graffiti or fly-posting offence in its area. Where no amount is specified by a local authority, s.28 raises the base amount from £50 to £75. S.29 of the 2005 Act further amends the 2003 Act to give an authorised officer of a local authority the power to require the name and address of a person to whom he proposes to give a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information. S.30 of the 2005 Act extends the definition of “authorised officer” to allow local authorities to authorise individuals other than their own employees for the purpose of giving notices for graffiti and fly-posting offences.

### **Unlawful display of advertisements**

12. It is an offence under s.224 of the Town and Country Planning Act 1990 (“the 1990 Act”) to display an advertisement in contravention of regulations under s.220 of that Act. The offence is capable of being committed by a person who owns or occupies land where the advertisement is displayed, or whose business or concerns are advertised. A person is not guilty of an offence if he proves that (a) the advertisement was displayed without his knowledge; or (b) he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.

## **Placards and posters**

13. S.225 of the 1990 Act enables a local planning authority (“LPA”) to serve a notice on a person who has illegally displayed placards and posters, and to remove or obliterate these posters or placards where that person has failed to do so himself within the time specified in that notice. Where a person has failed to comply with such a notice, s.34 of the 2005 Act enables a local authority to recover the costs they incurred in removing or obliterating the illegally-displayed posters or placards.
14. In the first instance, the costs of removal are recoverable from the person identified in the poster or placard as having displayed it or having caused it to be displayed. However, if he cannot be identified, s.34(4) of the 2005 Act permits the local authority to recover costs from an identifiable person whose goods, services or concerns are publicised in the poster or placard (i.e. the beneficiary of the advertisement). Costs can only be recovered if he has failed to comply with a notice requiring him to remove the placard or poster within a specified time.
15. S.34(5) of the 2005 Act enables any person suffering damage to land or chattels caused by a LPA exercising these powers to receive compensation for that damage - other than a person who displayed, or caused the display, of the offending poster or placard. S.34(6) of the 2005 Act amends the 1990 Act to enable a local authority to enter both occupied and unoccupied land in order to remove unlawful posters or placards.

## **Audible intruder alarms**

16. Sections 69 to s.76 of the 2005 Act introduce new powers for local authorities to deal with the annoyance caused by audible intruder alarms in their areas. Under s.69 of the 2005 Act a local authority may designate its area (or part of it) as an alarm notification area. The effect of a designation is that the occupier or owner of any premises (residential or non-residential) in the area must notify the local authority of the details of a “key-holder” for the premises – s.71 (2) of the 2005 Act. The authority can then turn to that key-holder for assistance in silencing an alarm. Under s.71 (4) of the 2005 Act it is an offence to fail to nominate or notify the local authority of the details of a key-holder.

## **Noise from premises**

17. S.82 of the 2005 Act makes various amendments to the provisions in the Noise Act 1996 (“the 1996 Act”) relating to fixed penalties. The 1996 Act previously permitted a local authority to deal with noise exceeding permitted levels from only dwellings at night-time. An authorised officer of a local authority can, under s.8 of the 1996 Act, give a person who he believes has committed an offence under the 1996 Act a fixed penalty notice, offering him the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.
18. S.82 (2) of the 2005 Act introduces new sections 8A and 8B to the 1996 Act. S.8A (2) (a) enables a local authority to set the level of the fixed penalty (in lieu of liability to conviction for an offence) in its area. The fixed penalty is set at £100 where no amount is specified by a local authority. A local authority may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

## **Shopping and luggage trolleys**

19. S.99 of the 2005 Act amends Schedule 4 to the Environmental Protection Act 1990 (“EPA 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.

## **Statutory nuisance - insects**

20. S.101 of the 2005 Act amends s.79 of the EPA 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 EPA 1990.
21. The effect of s.101(3) of the 2005 Act 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 s.9(5) of that Act only, from constituting the new form of statutory nuisance.

## Statutory nuisance – lighting

22. S.102 of the 2005 Act amends s.79 of the EPA 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 EPA 1990.
23. Subsections 102(3) to (6) of the 2005 Act 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.

### Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
16	Control of Litter	Sets out the powers of local councils to control litter.
63	Planning and Building Enforcement	Details planning enforcement measures and considers advertisements further.
69	Anti-social behaviour and harassment	Sets out the effects of the Anti-social Behaviour, Crime and Policing Act 2014.

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