Clean Neighbourhoods and Environment Act 2005

Interim Guidance for Measures commenced on 7 June 2005
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Introduction


2. This document provides interim guidance on the measures contained within the Act that commence on 7 June 2005, and relate to nuisance vehicles, litter, advertisements, waste and noise. It sets out in simple terms the aim of the measures and provides a commentary on each section. Where applicable it also sets out related legislation that could be used to cover similar issues.

Who is the guidance for?

3. The guidance is intended for use primarily by enforcement authorities, such as local authorities. However, it is not restricted to their use and may be an informative document for those bodies with an interest in the legislation.

4. In the coming months, in conjunction with stakeholder groups, we will develop draft regulations and guidance on the remaining measures in the Act, which need to be commenced. In October this year we will hold a formal consultation on the content of both the draft regulations and guidance. Further information on this will be available from the Defra, Local Environmental Quality (LEQ) website: http://www.defra.gov.uk/environment/localenv/index.htm

5. It is intended that most of the remaining measures in the Act will be commenced by Spring 2006. This guidance and what is produced for the remaining measures of the Act will form part of comprehensive guidance that will be issued next year.

Enquiries

6. Any enquiries about the content of this Guidance should be made to:

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Nuisance Parking Offences (Part 2 of the Act)

Guidance on Section 3 to 5 – Nuisance Parking

7. **Note**: For the purpose of this guidance, the term ‘nuisance parking’ covers only those vehicles involved in the offences described in Sections 3 and 4 and is not intended to cover other parking infringements.

Why are these changes being introduced?

8. Some garages and businesses place cars for sale, for an extended period, on the street. This can cause a significant nuisance to local residents and takes up valuable car parking spaces. The same is true with vehicles that are repaired on the street, which can also look unsightly, can lead to damage of the local environment (for example when oil is spilled or leaked) and may also present a danger to passers by.

Who are the new offences targeted at?

9. The offence of selling vehicles on the road is intended to target those people who run a business selling motor vehicles and use the road as a mock showroom. This behaviour is unfair to local residents who are thereby deprived of using the road themselves to park vehicles and go about their daily lives. It is not intended to target individual private sellers of single vehicles, but the nuisance that is caused by the presence of numbers of vehicles being offered for sale by the same person or business. This is why the offence may only be committed where there are two or more vehicles being offered for sale. It is recognised that a private individual may at one time or another have more than one car to sell and decide to offer them by parking them close together on a road, but it is anticipated that this will only happen on rare occasions.

10. The offence of repairing a vehicle is also aimed primarily at those that act irresponsibly as part of a business and which are attempting to use the road as a mock workshop. It is not intended to target private individuals who are carrying out minor work to their vehicles (unless the repairs cause annoyance to persons in the vicinity), or those who carry out necessary work to vehicles by the side of the road in order to get them moving again after a breakdown or accident (such as breakdown organisations and mobile mechanics), provided the work is completed within 72 hours.

11. **Note**: These are new national offences and as such, many businesses and residents will not be aware of the provisions. Local authorities are encouraged to communicate the details of the offences within their areas before taking any enforcement action.
Fixed penalty notices

12. The Act also provides, in sections 6 to 9, for fixed penalties for these new offences. These sections will be brought into force by order of the Secretary of State. These provisions are similar to a number other provisions on fixed penalties in the Act, and it is intended to bring all these into force at the same time. In the meantime, offences under sections 3 and 4 will need to be prosecuted in the usual way through the courts.

Detailed guidance

13. This part of the guidance gives a commentary on each section and sub section.

Section 3 – Exposing vehicles for sale on a road

14. Section 3 (1) sets out the particulars of the offence: A person commits an offence if:

   a) he leaves two or more motor vehicles parked within 500m of each other on a road or roads where they are exposed or advertised for sale, or

   b) he causes two or more vehicles so to be left.

15. Section 3 (2) sets out the defence:

   A person is not to be convicted of an offence under subsection (1) if he proves to the satisfaction of the court that he was not acting for the purposes of a business of selling motor vehicles.

16. Section 3 (3) sets out the penalty:

   A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not extending level 4 (£2,500) on the standard scale.

17. Section 3 (4) sets out the definitions of ‘motor vehicle’ and ‘road’ used in Section 3:

   The definition of “road” is defined in section 142 of the Road Traffic Regulation Act 1984:

   ‘any length of highway or of any other road to which the public has access.’

18. Whether a piece of land is a road or not is a matter of fact. The main feature of a road is that the general public has a right to use it as a means of getting from A to B. The definition includes all highways (all land to which the public has a right to pass along for the purpose of legitimate travelling and includes both the carriageway and the footpath) and also access roads through estates that are owned by organisations such as Housing Associations or by the residents who live there. A car park for example would not normally come within the definition of a road as its function is to enable people to leave their vehicles.
19. The definition of ‘motor vehicle’ is the same as used in the Refuse Disposal (Amenity) Act 1978:

‘a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer’

20. This definition covers cars, motorbikes, the chassis of a car or motorbike, a trailer and a caravan.

Section 4 – Repairing vehicles on a road

21. **Section 4 (1)** sets out the offence:

A person who carries out restricted works on a motor vehicle on a road is guilty of an offence.

22. **Section 4 (2)** defines the term ‘restricted works’ used in subsection (1):

“restricted works” –

‘works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or any part of or accessory to a motor vehicle’

and

‘works for the installation, replacement or renewal of any such part or accessory.’

23. **Section 4 (3)** sets out the circumstances in which a person is not to be convicted of an offence:

A person is not to be convicted of an offence under section 4 in relation to any works if he proves to the satisfaction of the court that the works were not carried out:

c) in the course of, or for the purpose of, a business of carrying out restricted works; or

d) for gain or reward.

24. **Section 4 (4)** sets out circumstances in which the defence set out in subsection (3) does not apply:

*The defence does not apply where the carrying out of works gives reasonable cause for annoyance to persons in the vicinity.*
25. There is no legal definition of ‘reasonable cause for annoyance’ and interpretation of this provision will be for the courts. However, the concept of ‘reasonableness’ is one that will be familiar to local authorities.

26. Section 4 (5) sets out an additional defence, both elements of which must be demonstrated:

27. A person is not to be convicted of an offence under section 4 in relation to any works if he proves to the satisfaction of the court that the works carried out were works of repair which:

   e) arose from an accident or breakdown in circumstances where repairs on the spot or elsewhere on the road were necessary; and

   f) were carried out within 72 hours of the accident or breakdown or were within that period authorised to be carried out at a later time by the local authority for the area.

28. Section 4 (6) sets out the penalty:

   A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 (£2,500) on the standard scale.

29. Section 4 (7) sets out the definitions of ‘motor vehicle’, ‘road’ and ‘local authority’ used in Section 4:

   ‘motor vehicle’ and ‘road’— have the same definitions as used in section 3 (4) – see above at paragraphs 17-20.

30. Local Authorities can under this section authorise repairs to go on outside the initial 72-hour period. The definition of ‘local authority’ is as defined in section 9 as:

   (a) a district council in England;
   (b) a county council in England for an area for which there is no district council;
   (c) a London borough council
   (d) the Common Council of the City of London
   (e) the Council of the Isles of Scilly;
   (f) a county or county borough council in Wales
Section 5 – Liability of Directors

31. This section aims to ensure that directors and officers of companies (corporate bodies) and others who are in similar positions do not shirk the responsibilities of their business. It introduces personal liability for the offences for directors and officers and others acting or purporting to act in such a capacity. This is in addition to the company being liable. It applies to both new offences set out in section 3 and 4.

32. **Section 5 (1)** sets out the offence:

Where an offence under section 3 or 4 committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of:

- g) any director, manager, secretary or other similar officer of the body corporate, or
- h) a person who was purporting to act in such a capacity,

he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

33. **Section 5 (2)** – Offers further clarification in relation to personal liability in the case of a company that is managed by its members where those members are treated as if they were the directors.

34. Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body.

35. Schedule 5, Part 1 – This repeals the following provisions:

   a. **Section 5 of the Greater London Council (General Powers) Act 1982.** This makes it an offence to carry out restricted works on a motor vehicle or trailer on any highway in Greater London. The defences are the same as for this Act. This Act simply extends similar provisions nationally.

   b. **Sections 3 and 11 of the London Local Authorities Act 2004.** Section 3 amends the Refuse Disposal (Amenity) Act to allow London local authorities to dispose of certain vehicles immediately after removal. Section 11 amends Section 5 of the Greater London Council (General Powers) Act 1982 to add an additional defence to the offence of repairing a vehicle on the highway.

Current prosecutions - Greater London

36. Under Section 16(1)(e) of the Interpretation Act 1978, any prosecution begun under legislation repealed by an Act will be automatically saved and the repeal will not affect any investigation or legal proceeding and these may be instituted, continued or enforced and any such penalty, forfeiture or punishment imposed as if the repeal had not taken place.
Other relevant legislation

37. There is other legislation that local authorities can use to tackle nuisance vehicles. This part of the guidance sets out two examples.

The Local Government (Miscellaneous Provisions) Act 1976

38. Section 7 (1) of this Act gives an authorised officer of the Highways Authority power to specify a highway, through a control order, whereupon any person is prohibited from ‘selling’ or ‘offer to expose anything for sale’ on the designated highway. This includes selling from a stall or vehicle. Breaking such an order can lead to a maximum of a level 3 fine and a £10 fine for each day he continues to sell, or offer or expose to sell, after the expiration of a 7 day period. Such a control order does not apply to a shop or petrol filling station or a market where a toll or rent is applicable. Stalls in a roadside lay-by offering refreshements are also exempted.

The Highways Act 1980

39. Section 137 (1) makes it an offence to wilfully obstruct passage of a highway. The penalty for such an offence is a maximum of a level 3 (£1,000) fine.

40. Section 147 (1) makes it an offence to use a stall, container or vehicle with the purpose of offering anything for sale. This does not include vehicles designed for itinerant trading with occupiers of premises, or if part of a market where tolls or rents are applicable.

41. Section 149 (1) makes it an offence to deposit anything on the highway that might constitute a nuisance. If such an offence occurred the owner of the object would be issued with a notice to remove within a set time. If this notice was not complied with the local authority could apply to magistrate’s court for a removal and disposal order. If the object is considered a danger to users of the highway, or ought to be removed immediately, then the authority can remove the object immediately and reclaim expenses.
Litter (Part 3 of the Act)

Sections 18 and 27: Litter and Refuse

42. This part of the guidance relates to Section 18, which largely replaces section 87 of the Environmental Protection Act 1990 (the 1990 Act) to make it an offence to drop litter anywhere in the open air, and section 27, which confirms that discarded cigarette ends and chewing gum, together with similar material, are litter for the purposes of the 1990 Act.

Why are these changes being introduced?

43. Under the previous version of section 87 of the 1990 Act it was an offence to drop litter on land to which the public have access, but not to drop it onto other land or into water. The revised section 87 makes it an offence to drop litter onto or into all types of land and water, including the sea down to the low-water mark. This will resolve the anomalies within the previous legislation, under which it was illegal to fly-tip on private land, but not to drop litter, and it was an offence to drop litter on a public footpath, but not to throw it into a neighbouring garden.

44. Section 27 clarifies that discarded smoking materials and chewing gum are litter. The Government believes that these materials are already litter, as defined in the 1990 Act, but section 27 confirm to practitioners and the courts that this is the case.

45. It is the Government’s view that the duty, under section 89 of the 1990 Act, to ensure that relevant land is, so far as is practicable, kept clear of litter and refuse already extends to chewing gum and smoking related materials, and that it is not affected by section 27. However, the Government intends to clarify, in a revised Code of Practice on Litter and Refuse made under section 89(7), the extent of this duty in relation to chewing gum.

Detailed guidance: Section 18

(The commentary refers to the sub-sections of the amended section 87 of the 1990 Act.)

46. **Subsection (1)** simplifies the previous subsection (1).

47. It states that a person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies. It is no longer necessary for the litter to cause or contribute to the defacement of a place by litter.

48. **Subsection (2)** states that section 87 applies ‘to any place in the area of a principal litter authority which is open to the air.’

49. ‘**Principal litter authority**’ is defined in section 86(2) of the 1990 Act. Under section 72 of the Local Government Act 1972 the area of a local authority which is on the coast extends down to the low-water mark. The term ‘**open to the air**’ is defined in section 86(13)
of the 1990 Act; this states that ‘a place shall be treated as ‘open to the air’ if it is covered, provided that it is open to the air on at least one side (but see subsection 3 below).

50. **Subsection (3)** states that if a place is ‘open to the air’ by virtue of section 86(13) i.e. because it is open to the air on at least one side, section 87 applies to it only if the public have access to it, with or without payment. It should be noted that the question of public access is no longer relevant for any other place that is ‘open to the air’.

51. **Subsection (4)** states that ‘it is immaterial for the purposes of this section whether the litter is deposited on land or in water’. In law the term ‘land’ includes land covered by water so this section already applies to ponds, lakes, rivers etc, and to the sea down to the low water mark. This subsection simply confirms that throwing down, dropping or depositing litter in water is an offence.

52. **Subsections (4A), (4B) and (4C)** set out exceptions to the offence.

53. Subsection (4A) retains the existing exception that no offence is committed if depositing litter is

   (a) authorised by law; or

   (b) done by or with the consent of the owner, occupier or other person having control of the place where it is deposited’.

54. **Subsection (4B)** limits the ability of someone to consent under (4A) to the deposit of litter in a lake, pond or watercourse. Such consent can only be given by someone who owns or controls all the land surrounding a lake, pond or watercourse that they own or control, and all the land through which the water from the lake or pond or watercourses passes and the land, including waterbodies, that the water discharges into, unless this is by means of a public sewer. This provision is intended to ensure that litter dropped into one body of water cannot be carried into another body of water under different ownership or control.

55. **Subsection (4C)** states that the terms ‘lake or pond’, ‘watercourse’ and ‘public sewer’ have the same meanings as in section 104 of the Water Resources Act 1991. Section 104 needs to be read together with section 221 (General Interpretation) of the same Act. Accordingly:

   ‘lake or pond’ includes a reservoir of any description (s.104)

   ‘watercourse’ includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except mains and other pipes which:

   (a) belong to the Environment Agency or a water undertaker; or

   (b) are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises; (s.221)

   ‘public sewer’ means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under
Section 27

56. Section 27 inserts a new subsection (5A) into section 98 of the 1990 Act. This provides that, for the purposes of Part 4 of the Act, the term “litter” includes smoking-related litter such as cigarette butts, cigars and like products, and discarded chewing gum and discarded remains of other products designed for chewing such as bubble gum. This provision clarifies that it is an offence under section 87 to discard such smoking related litter and chewing gum, and that offenders can be prosecuted under that section or issued with a fixed penalty under section 88.
Graffiti and other Defacement (Part 4 of the Act)

Section 33 – Unlawful display of advertisements: defences

57. Under section 224(3) of the Town and Country Planning Act 1990 (TCPA 1990) a person is guilty of an offence if he displays an advertisement in contravention of regulations made under section 220 of that Act. Section 224(4) TCPA 1990 deems the owner or occupier of the land on which the advertisement is displayed, or a person whose business or concerns are advertised, to be “displaying” that advertisement, but section 224(5) provided a defence for exempting such people from liability for the criminal offence where such display was without their knowledge or consent. Section 33 of the Clean Neighbourhoods and Environment Act 2005 now restricts the defence to cases in which the person concerned can either prove that the display was without his knowledge, or he took all reasonable steps either to prevent the display or, once displayed, to remove the advertisement. This will ensure that the beneficiaries of fly-posting will no longer be able to avoid prosecution just by claiming that the advertisement was displayed without their consent.

58. This guidance is intended for local planning authorities who are responsible for enforcing the regulations made under section 220.

Description

59. This provision removes from section 224(5) TCPA 1990 the current defence that the advertisement has been displayed without the knowledge or consent of the landowner/occupier/beneficiary. This is replaced by an amended defence, inserted as subsection 224(6), so that someone charged with the offence will have to prove either that the advertisement was displayed without his knowledge; or that he took all reasonable steps to prevent the display or, subsequently, to secure the advertisement’s removal.

Repeal

60. Section 25 of the London Local Authorities Act 2004 is repealed. This section provided a defence that the beneficiary must demonstrate either a lack of knowledge of the display of the advertisements or that he took all reasonable steps and exercised all due diligence to prevent or discontinue their display, but only applied in London.
Waste: Transport of waste
Deposit and Disposal of Waste (Part 5 of the Act)

Section 35 Removing the defence of acting under employer’s instructions

61. Under section 1 of the Control of Pollution (Amendment) Act 1989, it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste within Great Britain in the course of any business of his or otherwise with a view to profit.

62. Previously, there was a defence that could be used to avoid liability for this offence, that the defendant was acting under his employer’s instructions. Section 35 amends the 1989 Act to remove this defence.

Section 3 Registration requirements and conditions

63. Section 36 amends the powers to make regulations contained in section 2 of the Control of Pollution (Amendment) Act 1989 providing for the registration of carriers of waste. In particular, it removes the power to provide that regulations may require that a certificate of registration should be provided free of charge.

64. Schedule 5, Part 4 of the Act includes certain repeals to sections 1 and 2 of the Control of Pollution (Amendment) Act 1989 as described above.

65. Section 36 also enables regulations to be made which require carriers of waste to comply with specified conditions, and to provide for inspections to ensure such compliance.

Section 40 Removing the defence of acting under employer’s instructions

66. Section 33 of the Environmental Protection Act 1990 sets out the main offences concerning the illegal disposal of waste. Previously, there was a defence that could be used to avoid liability for these offences under section 33 that the defendant was acting under his employer’s instructions. Section 40 of this Act amends the 1990 Act to remove this defence.

67. Schedule 5, Part 4 of the Act repeals the part of section 33 of the 1990 Act relevant to the previous defence.

Section 41 Penalties on conviction

68. Section 41 amends the penalties available for offences under section 33 of the Environmental Protection Act 1990. For a summary conviction, it raises the maximum term of imprisonment to twelve months (from six months previously) and it increases the maximum available fine from £20,000 to £50,000; for conviction on indictment, it raises the maximum term of imprisonment for offences concerning non-hazardous waste to five years (the same as already applies to offences relating to hazardous waste).
69. This measure is in line with Government’s desire to take a tougher stance on environmental crime and stresses the seriousness of illegally disposed waste.

70. Section 41 ensures that penalties are consistent, irrespective of whether the waste that has been illegally deposited is classed as hazardous or non-hazardous. Penalties can now be based on the seriousness of each incident.

71. By raising the maximum penalty for offences concerning non-hazardous waste to 5 years imprisonment, section 41 has the effect of making the fly-tipping of non-hazardous waste an arrestable offence under the Police and Criminal Evidence Act 1984. (Offences concerning hazardous waste were already arrestable offences under PACE.)
Waste: Site Waste (Part 5 of the Act)

Section 54 Site waste management plans

72. Section 54 gives the Secretary of State in England (and the National Assembly for Wales in Wales) the power to make regulations to require developers and contractors to produce a written site waste management plan for construction and demolition projects. The Government will develop the relevant regulations in consultation with all stakeholders and will bring them forward in due course.

73. The aim of site waste management plans will be to reduce wastage of construction materials; improve regulatory compliance (for example with the Duty of Care regime); encourage re-use and recycling that reduces demand for primary materials; and reduce the illegal disposal of waste.
Noise (Part 7 of the Act)

Section 83  Noise offences: use of fixed penalty receipts

74. Section 83(1) and (2) amends section 9 of the Noise Act 1996 to add to the list (in section 9(4A)) of qualifying functions for which a local authority can use its receipts from the fixed penalty notices it has issued under section 8 of the 1996 Act. The additional qualifying functions are the new functions on audible intruder alarms (once commenced) contained in Chapter 1 of Part 7 of this Act, and functions on statutory noise nuisance (whether from premises or from, or caused by, vehicles, machinery or equipment in a street) under sections 79 to 82 of the Environmental Protection Act 1990. This measure comes into effect on 7 June 2005.

Why is this change being introduced?

75. Previously, local authorities could retain receipts from fixed penalty notices issued under the Noise Act 1996, as amended by the Anti-social Behaviour Act 2003, to spend on functions under that Act, i.e. night-time domestic noise, plus any that might be specified by the Secretary of State in regulations. The new qualifying functions now being added give local authorities greater flexibility to use such fixed penalty notice receipts additionally on statutory noise nuisance and the regulation of intruder alarms. Local authorities will thus be able to spend receipts from fixed penalty notices issued under the Noise Act 1996 to tackle a wider range of noise problems.
Miscellaneous (Part 9 of the Act)

Section 105 Offences relating to pollution etc: penalties on conviction

76. Section 105 amends the Pollution Prevention and Control Act 1990 to allow regulations made under section 2 of that Act to impose penalties at a higher level than hitherto for offences contained in those regulations. It permits the maximum available fine on summary conviction to be set at £50,000 (from a previous maximum of £20,000), and the maximum term of imprisonment on summary conviction to be set at twelve months (previously six months) in line with the Criminal Justice Act 2003.

77. This measure is in line with changes to the penalties for the offences of illegal waste disposal under section 33 of the Environmental Protection Act 1990. It will allow Government to harmonise the penalties for waste management licence and PPC breaches.