SECTION 93, EPA 1990 - STREET LITTER CONTROL NOTICES

Street Litter Control Notices are issued pursuant to section 93 of the Environmental Protection Act 1990 (EPA).

The section 93 procedure can be used very effectively to promote commercial ownership of the cleanliness of the area: this does have benefits for the business community, such as increased footfall and profit, but such benefits often go unrecognised by smaller business operators who tend to concentrate on day to day issues.

Section 93 notices are only meant to be used, if education and partnership working fails, to make certain defined commercial operators responsible for the clearing of the excess of litter and refuse arising from the presence of their businesses and / or providing adequate disposal facilities.

Businesses should also be made aware that litter cleared voluntarily remains litter. However, litter picked up in compliance with a section 93 notice becomes controlled waste and will fall within duty of care (section 34 EPA).

NOTE – section 93 is under prospective amendment to include non-retail premises, such as offices.

The relevant premises:

The Notice is served on the occupier or (if the premises are unoccupied) the owner, of specified types of commercial or retail premises (see below). If the occupier or owner changes, you need to serve a new Notice in order for the requirement(s) to continue.

This Notice can only be used in relation to certain commercial and retail premises, as specified by the Street Litter Control Notices Order 1991 (as amended).

The premises are:

1. Premises used wholly or partially for sale of food or drink for consumption on or off premises
2. Service stations and other premises where fuel is sold to the public
3. Recreational or sporting premises
4. Premises with automated teller machines on an outside wall
5. Premises in respect of which there is for the time being in force a betting office licence
6. Premises used wholly or partly for the sale of tickets or chances in any lottery
7. Premises used wholly or partly for the sale of goods of any description which are displayed on open land adjacent to the street, or on the street
8. Vehicles, stalls and other moveable structures used for commercial or retail activities on a street.

PROVIDED the premises have a frontage onto a street.
A street is defined by section 93(4) EPA to include any road or highway where people may pass on foot. Thus, even a footpath through a park would qualify as a “street” for these purposes.

The land that may be included:

Section 93(3) provides that the land specified must be open land (defined as land open to the air, rather than unenclosed) which adjoins or which is in the vicinity of the frontage of the premises in question. The Street Litter Control Notices Order 1991 provides that the land to be included can be:

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

AND

- The land specified is within 100 metres of the premises, or
- The land is within 10 metres of the premises in cases of automated teller machines.

The criteria for serving a Street Litter Control Notice:

These are contained in section 93(2):

A) 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 (note that there is no requirement for direct proof that the premises in question caused the defacement) OR

B) The condition of any part of the premises which is open land in the vicinity of the frontage is likely to continue to be, detrimental to the amenity of the locality by reason of the presence of the litter or refuse (note again that there is no requirement for direct proof that the premises in question caused the defacement), OR

C) 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

AND

D) The intended recipient has been given the opportunity to make representations within 21 days of being informed of intention to serve a Notice, and such representations have been taken into account.

The authority should refer to the cleanliness grades set out in the Code of Practice on Litter and Refuse to determine when land may be considered to be defaced.
The Code may be found at www.defra.gov.uk/environment/localenv/litter/code/index.htm. Defacement would ordinarily accord with Grade C or worse. As these grades are best determined by visual inspection, photographic or video evidence would be required to support the authority’s decision. Such evidence should be taken periodically from the beginning, not least as this may also inform the authority and the occupiers of the premises as to any patterns of timing or activity contributing to the problem.

The Requirements of the Notice:

The requirements that can be imposed are set out in section 94(4) of the Act and, as with all Notice requirements, they must be reasonable. **The requirements must also only relate to the reduction of the litter and refuse problem identified in the area prescribed.**

To identify what is reasonable the authority should consider that it may itself have cleansing responsibilities for part of the land concerned and would have a cleansing issue in the area even if none of the prescribed commercial premises were present. The Notice should only require action to deal with the enhanced problem caused by the presence of these premises. One option might be to consider the increased rate of cleansing required and impose a clearing requirement to remove this increased burden.

**The types of condition the Notice may require include:**

- the frontage to be kept to a specified standard of cleanliness;
- the frontage to be swept at given intervals; and / or
- litter bins to be provided and emptied.

The requirements should be achievable, reasonable and measurable. To assist in this process, the authority should continue to monitor the problem and preserve timed /dated photographic or video evidence throughout any attempts to tackle the problem by agreement. This evidence will then help to inform the authority as to what measures either work or are lacking and may therefore usefully be imposed by Notice.

In addition, the authority must notify the occupier (or owner if to be served on the owner) of the premises of the proposed Notice and allow **21 days for receipt of representations.** The authority should be prepared to either dispense with the Notice or adapt the Notice requirements in response to any such representations – if the authority believes that such action would be merited as a result of those representations.

It is important to note that the authority must first seek to work in partnership with the premises concerned to solve the problem. There is a Voluntary Code of Practice for ‘Reducing litter caused by ‘Food on the Go’ which sets out recommendations to help businesses, local authorities and other public and private sector bodies work together. The Code provides a framework to identify how, when and where the worst litter problems arise and to work out ways of preventing and reducing these, in partnership with other agencies. Copies of the code are available from Defra
As stated above, timed photographic / video evidence should be taken throughout the process from the very beginning. This may be used not only as evidence to support the authority's decisions, but perhaps more importantly to inform the occupiers of the premises of the pattern and extent of the problem. Note that this monitoring should also prove valuable in determining actions that should be taken to reduce the problem, either by agreement or by Notice.

If agreement is not possible, then the authority must first serve notice on the occupier of the premises or (if the premises are unoccupied) the owner, attaching a draft of the Notice it intends to serve. The recipient of this preliminary notice must be allowed 21 clear days to make representations and be notified of the address and manner by which representations may be made.

If the Notice is still to be served following expiry of the period for representation, then the Notice may be served on the occupier or (if the premises are unoccupied) the owner.

Service:

Provided the 21 day period has expired, then the Notice may be served by any of the methods detailed in section 160 of the Environmental Protection Act 1990. These include personal hand delivery to the person or by leaving it at the person's usual or last known address. Service may be carried out by ordinary post or, where reasonable enquiry has failed to identify a name or address, it may be served by placing the Notice on a conspicuous place on the premises addressed to the occupier or owner.

Note that service of the Notice is a critical point of evidence, not merely an administrative chore.

There are 3 key points of challenge to any Notice:

1. it was not properly authorised;
2. it is defective in drafting or procedure; and / or
3. it cannot be proven to have been served.

THE PROCEDURE – SUMMARY:

- Local authorities should begin monitoring and retaining evidence of the problem
- Local authorities should inform and seek to work in partnership with the premises to alleviate the problem
- If this fails, local authorities must inform the person on whom a notice is proposed to be served of the draft requirements and allow him a 21 day period in which to make any representations.
• These representations must be taken into account by the authority in deciding on the content of the Notice and its issue.

• Serve the Notice, if still deemed appropriate.

**Appeal Process**

An appeal against the Notice may be made to a magistrates’ court. The court must allow the appeal if the recipient can prove that he / she has complied with the duty imposed under section 89(1) Environmental Protection Act 1990 in respect of the land; the Code of Practice on Litter and Refuse issued pursuant to section 89(7) is admissible as evidence in respect of compliance with that duty.

**ENFORCEMENT**

It is only an offence to fail **without reasonable excuse** to fail to comply with the Notice. A reasonable excuse might, for example, include that the occupier had been unexpectedly let down by a cleaning contractor.

If you are satisfied that you have sufficient evidence of non-compliance you should explain the offence and decide whether to offer a fixed penalty notice.

However you may decide that the circumstances are sufficiently serious to merit prosecution. A fixed penalty should not be offered in cases of repeat default. A successful prosecution could lead to a fine up to £2500. There are no default powers available in relation to this Notice.