



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 9

#### MISCELLANEOUS AND GENERAL

### CHAPTER 1

#### MISCELLANEOUS

#### *Powers of Scottish litter authorities*

#### **179 Powers of litter authorities in Scotland**

(1) In Part 4 of the Environmental Protection Act 1990 (litter etc), after section 91 insert—

#### **“92 Summary proceedings by litter authorities**

- (1) Where a principal litter authority in Scotland other than a joint board is satisfied as respects—
- (a) any relevant Crown land,
  - (b) any relevant land of a designated statutory undertaker,
  - (c) any relevant land of a designated educational institution, or
  - (d) any relevant land within a litter control area of a local authority,
- that it is defaced by litter or refuse or that defacement of it by litter or refuse is likely to recur, the authority shall serve a notice (a “litter abatement notice”) imposing either the requirement or the prohibition or both the requirement and the prohibition specified in subsection (2).
- (2) The requirement and prohibition referred to in subsection (1) are as follows, namely—
- (a) a requirement that the litter or refuse be cleared within a time specified in the notice;

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- (b) a prohibition on permitting the land to become defaced by litter or refuse.
- (3) The litter abatement notice shall be served—
- (a) as respects relevant Crown land, on the appropriate Crown authority;
  - (b) as respects relevant land of a designated statutory undertaker, on the undertaker;
  - (c) as respects relevant land of a designated educational institution, on the governing body of the institution or on the education authority responsible for the management of the institution;
  - (d) in any other case, on the occupier of the land or, if it is unoccupied, on the owner of the land.
- (4) The person served with the notice may appeal against the notice to the sheriff by way of application within the period of 21 days beginning with the date on which the notice was served.
- (5) If, on any appeal under subsection (4), the appellant proves that, as respects the land in question, he has complied with his duty under section 89(1), the court shall allow the appeal.
- (6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.
- (7) In any proceedings for an offence under subsection (6), it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under section 89(1).
- (8) A direction under section 89(6A) or a code of practice under section 89(7) shall be admissible in evidence in any proceedings under this section and, if any provision of such a direction or code appears to the court to be relevant to any question in the proceedings, it shall be taken into account in determining that question.
- (9) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the authority may, subject to subsection (10)—
- (a) enter on the land and clear the litter or refuse, and
  - (b) recover from that person the expenditure attributable to their having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.
- (10) Subsection (9) does not apply in relation to relevant Crown land or relevant land of statutory undertakers.

### **93 Street litter control notices**

- (1) A principal litter authority in Scotland other than a joint board 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

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notices”) imposing requirements on occupiers of premises in relation to such litter or refuse, in accordance with this section and section 94.

(2) If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94(1)(a) and have a frontage on a street in their area, that—

- (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,
- (b) 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
- (c) there is produced, as a result of the activities carried on 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,

the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.

(3) A notice shall, subject to section 94(2), (3) and (4)—

- (a) identify the premises and state the grounds under subsection (2) on which it is issued;
- (b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;
- (c) specify, in relation to that area or any part of it, such reasonable requirements as the authority considers appropriate in the circumstances;

and, for the purposes of paragraph (b), an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

(4) In this section and section 94—

“notice” means a street litter control notice;

“open land” means land in the open air;

“the premises”, in relation to a notice, means the premises in respect of which the notice is issued;

“specified area” means the area specified in a notice under subsection (3)(b); and

“street” means a relevant highway, a relevant road or any other highway or road over which there is a right of way on foot.

#### **94 Street litter: supplementary provisions**

(1) The Scottish Ministers may by order prescribe—

- (a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;
- (b) the descriptions of land which may be included in a specified area; and
- (c) the maximum area of land which may be included in a specified area;

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and different descriptions or maximum dimensions may be prescribed under paragraph (b) or (c) for different cases or circumstances.

An order under this subsection is subject to the negative procedure.

- (2) The power to describe premises or land under subsection (1)(a) or (b) includes power to describe the premises or land by reference to occupation or ownership or to the activities carried on there.
- (3) The land comprised in a specified area—
  - (a) shall include only land of one or more of the descriptions prescribed under subsection (1)(b);
  - (b) shall not include any land which is not—
    - (i) part of the premises,
    - (ii) part of a street,
    - (iii) relevant land of a principal litter authority, or
    - (iv) land under the direct control of any other local authority; and
  - (c) shall not exceed any applicable maximum area prescribed under subsection (1)(c);

but a specified area shall not include any part of the premises which is or is part of a litter control area.
- (4) The requirements which may be imposed by a notice shall relate to the clearing of litter or refuse from the specified area and may in particular require—
  - (a) the provision or emptying of receptacles for litter or refuse;
  - (b) the doing within a period specified in the notice of any such thing as may be so specified (including the standards to which any such thing must be done); or
  - (c) the doing (while the notice remains in force) at such times or intervals, or within such period, of any such thing as may be so specified;

but a notice may not require the clearing of litter or refuse from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.
- (5) In relation to so much of the specified area as is not part of the premises the authority shall take account, in determining what requirements to impose, of their own duties under this Part or otherwise, and of any similar duties of any other local authority, in relation to that land.
- (6) An authority proposing to serve a notice shall—
  - (a) inform the person on whom the notice is to be served;
  - (b) give him the opportunity to make representations about the notice within the period of 21 days beginning with the day on which he is so informed; and
  - (c) take any representations so made into account in making their decision.
- (7) A person on whom a notice is served may appeal against the notice to the sheriff by way of application; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.
- (8) If it appears to the authority that a person has failed or is failing to comply with any requirement imposed by a notice, the authority may apply to the sheriff

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by way of application for an order requiring the person to comply with the requirement within such time as may be specified in the order.

- (9) A person who, without reasonable excuse, fails to comply with an order under subsection (8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
- (2) Any order under section 94(1) of the Environmental Protection Act 1990 which had effect immediately before the coming into force of paragraph 21 of Schedule 11 to the Anti-social Behaviour, Crime and Policing Act 2014—
- (a) is (so far as extending to Scotland) revived on the coming into force of this section, and
  - (b) has effect on its revival as if made under section 94(1) of that Act as re-enacted with modifications by this section.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/1139, reg. 2 by [S.I. 2017/1162 reg. 2](#)