



Briefing 07/18 March 2007

# Defra Consultation on Street Litter Control Notices

Consultation on proposed amendment of sections 93 and 94 of Environmental Protection Act 1990 and Street Litter Control Notices Order 1991 (S.I. 1991/1324). The consultation only applies to England but should be of interest to Northern Ireland and Wales members where the smoke ban will commence shortly and also to those members in Scotland where the ban has been in place since 2006.

## **Key issues**

The Government is looking to extend the range of premises covered by street litter control notices (SLCN).  
Defra suggest that the cost of issuing SLCNs is £450 per notice.  
It is assumed that 80% of businesses will comply with the SLCN with the remaining 20% having to be issued with a fixed penalty notice (FPN).

## **1. Introduction**

Defra have issued a consultation on the proposed extension of local authority powers under sections 93 and 94 of the Environmental Protection Act 1990 (EPA) for tackling

street litter through the use of street litter control notices. The objective of Defra with this proposal is to help reduce smoking-related litter on the streets in advance of the smoking ban in England. The consultation proposes an extension to the types of premises currently falling within the scope of the SLCN provisions and not the introduction of a new regulation but seeks to amend an existing one. This consultation covers England only.

The consultation (31 pages), which closes on 8 May 2007, can be downloaded from the following hyperlink: [www.defra.gov.uk/corporate/consult/naturalenvironment.htm](http://www.defra.gov.uk/corporate/consult/naturalenvironment.htm)

## 2. Background

Defra is monitoring the condition of the nation's streets and public spaces through the annual Local Environmental Quality Survey of England (LEQSE) to determine whether the resources allocated to the street environment are being used to best effect. The results from the most recent survey show that, overall, improvements are being made with the level of unsatisfactory sites for litter and detritus falling from 28% in 2001/2 to 24% in 2005/6.

However certain types of litter such as drinks related litter, smoker's materials, and confectionery packaging have shown an increase. The table below illustrates this:

<b>% of Sites on which litter occurs</b>	<b>2001/2</b>	<b>2002/3</b>	<b>2003/4</b>	<b>2004/5</b>	<b>2005/6</b>
Drinks related litter	28	39	62	65	69
Confectionery packaging	47	52	66	67	68
<b>Smoker's materials</b>	<b>60</b>	<b>63</b>	<b>79</b>	<b>79</b>	<b>79</b>

These numbers do not distinguish between the levels of litter at the various sites and only report the occurrence of litter as opposed to the severity.

Although widespread, the visual impact of smoking-related litter is greatest in those areas where it accumulates. Additionally, smoking-related litter is more difficult to clean-up by normal cleaning processes. Cigarette filters do take a long time to break down and be absorbed back into the environment. It can also lead to toxins leaking into watercourses and posing a threat to wildlife.

## 3. Existing Legislation

A range of powers and duties for dealing with litter are currently provided by Part 4 of the EPA 1990, as amended by the Clean Neighbourhoods and Environment Act 2005 (CNEA). Measures available for dealing with smoking-related litter on the street include:

- ✓ **Section 87 of the EPA, Offence of dropping litter:** Offence to throw down, drop or otherwise deposit, and then leave, litter in any place in the open air. A

- person found guilty of the litter offence may be fined up to level 4 on the standard scale (currently £2,500) in a magistrates' court.
- ✓ **Section 88 of the EPA** allows an authorised officer of a litter authority to issue fixed penalty notices as an alternative to prosecution.
  - ✓ **section 27 of the CNEA** inserted a new section 5A into the EPA to clarify that 'Litter' includes the discarded ends of cigarettes, cigars and the discarded remains of other products designed for chewing'.
  - ✓ **Section 89 of the EPA, Duty to clear land of litter and refuse and to keep highways clean:** This imposes a duty on certain bodies for various descriptions of 'relevant land' and 'relevant highways' to ensure that these are, so far as is practicable, kept clear of litter and refuse, and in the case of highways, clean. Local authorities must meet these requirements for 'relevant land' (publicly accessible land that is under their direct control), and 'relevant highways' maintainable at the public expense.
  - ✓ **The 'Code of Practice on Litter and Refuse'** provides practical guidance on the exercise of this duty, including response times for cleaning areas in which standards have fallen below an acceptable level. In meeting these requirements local authorities will be expected to remove cigarette litter from streets and other public areas they have responsibility for.
  - ✓ **Sections 93 and 94 of the EPA Street Litter Control Notices (SLCN):** This gives local authorities the power to tackle street litter generated by specific businesses further to activities on adjacent premises. SLCN require businesses to clear up the litter and implement measures to prevent the land from becoming defaced again. Through the CNEA (subsection 93(3A)), SLCNs can also be served in relation to vehicles, stalls and other moveable structures used for commercial or retail activities on a street. The CNEA has also made it immediately an offence to fail to comply with the requirements specified in a SLCN.

#### **4. Existing Initiatives to Control Smoking-related litter**

##### **4.1 Cigarette Litter Action Group**

In 2006, ENCAMS established a Cigarette Litter Action Group to lead the co-ordination and implementation of demonstrable measures to reduce cigarette-related litter in advance of the ban on smoking in public places in July 2007 for England.

##### **4.2 Cigarette Litter Campaign**

In February 2006, ENCAMS ran a cigarette litter campaign in partnership with ten local authorities. The campaign was targeted at smokers who incorrectly dispose of their cigarettes, with the slogan *'However you disguise it, it's still litter. No butts – stub it, bin it'*.

Attitude and awareness surveys were conducted in locations across England and showed that 40% of the people questioned had seen the cigarette litter posters and 52% would be likely to change their behaviour as a result. Additionally, a 35% decrease in cigarette-related litter was recorded in the local authority areas participating in the survey. The success of this campaign is now being built on to develop a longer programme of activity to coincide with the introduction of the

smoke free legislation in England in July 2007. There is some concern that this will result in greater accumulations of smoking litter.

## 5. Options

Three options are put forward by Defra

**Option 1** – No change, continue to allow local authorities to issue street litter control notices only in respect of premises currently listed in the SLCN Order 1991.

**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 SLCN 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) EPA 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**.

The Government's preferred option is to introduce both amendments contained in options 2 and 3. However, option 3 will require change to primary as well as secondary legislation and if this cannot be brought forward in time for the start of the smoke free provisions, practicalities will mean that initially only option 2 is progressed by July 2007 followed by the extension to offices as soon as a suitable legislative opportunity arises.

Defra expect only around 1 or 2 additional SLCNs to be issued per local authority, if the preferred options in this consultation are taken forward. Estimates obtained from a survey of local authorities suggest that the cost of issuing notices, including investigation, appeal, follow-up and administration is around £450 per notice. In addition to the administration costs of issuing the SLCNs, councils will face enforcement costs should businesses not comply with the SLCN. It is assumed that 80% of businesses will comply with the SLCN with the remaining 20% having to be issued with a Fixed Penalty Notice (FPN).

Businesses who comply with the requirements of the SLCNs 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).

## 6. Questions from the Consultation

The Government is seeking response to three questions from the consultation

1. This consultation outlines actions being taken by Government to tackle the problem of smoking-related litter. Do you think any further interventions are needed by Government to help reduce this form of littering?
2. Do you think the current proposal would provide an effective mechanism for dealing with smoking-related litter in and around street areas? If not, what other measures would help to achieve this objective?
3. Are there any other costs and benefits associated with this measure that are not identified in the regulatory impact assessment? Do you have any comments on the estimates presented?

## **7. Comments**

The impact of the smoking ban for England in July 2007 (2 April 2007 for Wales and 30 April for Northern Ireland) will almost certainly lead to an increase in smoking related litter which as the figures quoted on page 3 of the briefing show has risen by almost 20% in the last 5 years. This is confirmed by reports from Scotland where the ban has been in place since March 2006 and for example

Aberdeen City Council have said there had been a significant increase in discarded butts, although additional litter bins had been placed at bus stops and other hotspots (Source: *The Herald* 26 April 2006).

Edinburgh where the number of fines issued for dropping cigarette litter has trebled after the smoking ban came into force (Source: *Evening News* online 17 Apr 2006).

APSE broadly support the two options suggested by Defra to extend the range of premises covered by SLCN in advance of the smoking bans. APSE believe these measures should also be complimented by steps that help people give up smoking as part of the Government's wider commitment to healthy living initiatives. In addition to the obvious health benefits, any reduction in numbers smoking will lead to less smoking related litter. These options will also increase the responsibility of owners of offices, bars and food outlets to play a greater role in ensuring that the street environment is kept tidy.

APSE would welcome the views of its members on the proposals set out in this consultation before making its formal response to the consultation. These issues will be discussed at the next meeting of the APSE waste management and street cleansing advisory group on 25 April in Manchester.

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