



Litter and Refuse

Guidance on Part 4 of the Environmental Protection Act, 1990 as amended by the Clean Neighbourhoods and Environment Act, 2005



8. Controlling the distribution of free literature

(Section 94B & schedule 3A)

8.1 The distribution of free literature can blight public spaces if leaflets and other printed materials are subsequently dropped as litter. Section 94B of and Schedule 3A to, the Environmental Protection Act 1990, as inserted by the Clean Neighbourhoods and Environment Act 2005, give principal litter authorities powers to control such distributions. The regime allows local authorities to designate, by order, areas of their own land or highways, in which the distribution of free literature is permitted only with their consent, and anyone distributing free literature in such an area without consent commits an offence, punishable by a fine of up to level 4 (currently £2,500) on the standard scale or a fixed penalty notice. It is also an offence to commission or pay for the distribution of free printed matter in a designated area without the necessary consent. Land can only be designated if the principal litter authority is satisfied that the discarding of free literature is causing its defacement.

8.2 Distributors and organisers who commission them will need to be aware that they may need to obtain consent from more than one principal litter authority if the proposed distribution will take place in a number of areas or cut across authority boundaries. Principal litter authorities should make it clear to applicants that they can only give consent for land which they have designated, and should advise applicants to check other authority designation orders and seek consent where necessary. It is recommended that any individual guidance prepared by principal litter authorities on Schedule 3A explains this, and includes name and contact details of the relevant departments of neighbouring authorities.

8.3 As with other provisions in Part 4 of the Environmental Protection Act 1990, principal litter authorities are encouraged to work with retailers and businesses to minimise the problems associated with the distribution of free literature before imposing restrictions.

For example, some advertising companies have codes of conduct to minimise the amount of free literature that is discarded and ends up accumulating as litter in the local environment. Principal litter authorities may wish to endorse these codes and encourage others to adopt them or establish a voluntary scheme with advertisers before seeking to designate an area. Detailed guidance on the use of the legislation, including the granting of consent and imposition of conditions is given below.

Offence of unauthorised distribution

8.4 Paragraph 1 of Schedule 3A creates the offence of unauthorised distribution of free printed matter.

8.5 Sub-paragraph (1) states that for the offence to be committed:

- The land on which the matter is distributed must be designated under paragraph 2;
- The person distributing the matter must know that the land is designated.

8.6 To ensure that the second condition is met, principal litter authorities will need to ensure that they adequately publicise details of land in their area which has been designated. This should be undertaken by means of on-site signage wherever it is practicable to do so. Principal litter authorities should also consider publicising by other means, for example, websites, leaflets, local publications and direct contact with businesses and distributors in the area.

8.7 Sub-paragraph (2) states that an offence is committed if someone causes another person to distribute free printed matter in a designated area without consent. The person commissioning the actual distributor therefore also commits an offence. In this case there is no requirement for the person concerned to know that the land is designated; those organising the distribution of free printed matter are expected to inform themselves of the existence of designated areas. However, under sub-paragraph (3) someone organising such a distribution is not guilty if he can show that he took 'reasonable steps to ensure that the

distribution did not occur on any land designated under this Schedule'. To benefit from this defence, an organiser would need to be able to demonstrate that he had taken steps, through, for example, written instructions, to ensure that the distributors of the printed matter were aware of the location of any designated land and that they should not distribute the matter on that land.

8.8 Sub-paragraph (4) creates a specific exemption from the provisions of the Schedule where the distribution is for political, charitable or religious purposes, so as not to inhibit the right to freedom of expression and freedom of thought, conscience and religion enshrined in the European Convention of Human Rights and the Human Rights Act 1998.

There is no definition of these terms in the legislation, and interpretation of them is a matter for the courts, and European case law has seen these terms interpreted widely. In all other cases, the legislation allows for justifiable controls. However, the decisions of local authorities to designate land and to give or refuse consent must still be compatible with

Article 10 of the European Convention of Human Rights.

8.9 Sub-paragraph (6) defines the term 'distribute' as covering the giving out of free printed matter, and offering it or making it available to the public. It therefore catches material that is given out by hand or by means of placing newspapers, leaflets etc. in a stand on designated land. Matter placed on or affixed to vehicles is included within the definition, but the offence does not extend to material put inside a building or letterbox. By virtue of sub-paragraph (7) the provisions do not extend to the distribution of printed matter inside a public service vehicle such as a bus, as defined in Part 1 of the Public Passenger Vehicles Act 1981. However, the provisions will still apply to material distributed to the public *from* a vehicle on to designated land, whether it is stationary or in motion.

Free newspapers

8.10 Free newspapers are captured by the provisions to the same extent as any other type of free printed matter such as leaflets, pamphlets and stickers. Whether or not their distribution is exempt under sub-paragraph (4) will depend on their content. Free newspapers posted through letter-boxes, placed inside buildings, or distributed inside a public service vehicle will not fall under the controls in accordance with sub-paragraphs (6) and (7). Promotional supplements and fliers contained within newspapers should not be regarded as 'free' if they are part of a paid-for package.

Designation

8.11 Paragraph 2 authorises a principal litter authority (other than a county council in an area where there is a district council) to designate an area in which the distribution of free printed matter is to be controlled and sets out the procedures that are to be followed.

8.12 Under sub-paragraph (2) land that is designated must be either relevant land of the authority or all or part of any relevant highway for which the authority is responsible, or both. For definitions of 'relevant land' and 'relevant highway' see s 86 of the 1990 Act (in guidance on section 89 above). Restrictions cannot therefore be imposed in relation to private land or premises.

8.13 Under sub-paragraph (3) a principal litter authority can only designate land if it is satisfied that it is being defaced by the discarding of free printed matter which has been distributed there. As in section 92(1), whether or not land is 'defaced' is a matter of fact, but the impact of the defacement will depend on a number of factors, such as the condition of the site and impact on the surrounding area. It is therefore unlikely that a designation order for a whole local authority or city will be appropriate as designations will relate to a point source or sources from which the materials are being distributed and the area around it that is affected by litter.

Authorities are advised to gather evidence of the defacement, for example, by taking photos or carrying out litter surveys, in support of any proposal to designate.

8.14 Sub-paragraphs (4) to (7) set out the procedures for designation. These are summarised below:

Step 1: Notification of proposal to make an order

8.15 The authority must issue a notice setting out its proposal. This must be:

- published in at least one newspaper circulating in the locality; and
- posted directly on the land.

Principal litter authorities are also advised to publish the notice on the internet via their individual websites.

8.16 The notice must contain:

- details of the land that the principal litter authority proposes to designate. It may be useful for the notice to include a map showing the boundary of the area;

- the date that the proposal will come into force. This must be at least 28 days from the date the notice is issued;
- how and for how long objections to the proposal may be made. At least 14 days from the date of the notice must be allowed for objections.

Step 2: Consideration of any objections

8.17 Principal litter authorities are required to take account of all objections they receive. Proper consideration should be given to each objection, and if it is decided to reject it, the reasons should be recorded; this could be crucial if the decision to go ahead with a proposal and to reject objections to it is challenged legally. It is good practice to write to all objectors whose objections have been rejected explaining the reasons for the authority's decision.



Step 3: Notification of an order

8.18 If a principal litter authority decides to go ahead with an order, it must issue a notice announcing its decision. This must be:

- published in at least one newspaper circulating in the locality; and
- posted directly on the land.

Authorities are also advised to publish the notice on the internet via their individual websites.

8.19 The notice must give the date that the order will come into force. This must be at least 14 days from the date the notice is issued.

8.20 Sub-paragraph 2(8) allows a principal litter authority to revoke an order at any time. By sub-paragraph 2(9), notice of the revocation must be:

- published in at least one newspaper circulating in the locality; and
- posted directly on the land.

Authorities are also advised to publish the notice on the internet via their individual websites.

Consent and conditions

8.21 Paragraph 3 sets out the rules for issuing consents to distribute free printed matter in an area subject to a designation order.

8.22 Under sub-paragraph (1) anyone wishing to distribute free literature in a designated area must apply to the principal litter authority for consent to do so. Consent may be given by the authority to the person applying or to any other person. The consent may be for named individuals or by description. An example of the latter would be to all the employees of a particular company. Where the applicant wishes to use a variety of distributors, such as independent contractors, self-employed distributors and their agents or employees, the authority should ensure the applicant is aware of their responsibilities for ensuring the consent is complied with, in granting authorisation. Authorities should agree a reasonable timescale for responding to applications, and applicants should be advised of this.

8.23 **Sub-paragraph (2)** allows the principal litter authority to place limitations on the consent:

- by reference to the material that may be distributed;
- by reference to a particular period, or particular times or dates;
- by reference to any part of the designated land;
- to a particular distribution.

Alternatively, a blanket consent may be given to the persons specified, allowing the distribution of any material in any part of the area at any time.

8.24 **Sub-paragraph (3)** states that the principal litter authority 'need not' give consent to the applicant if it considers that the proposed distribution would likely lead to defacement of the designated land. There is no requirement for the local authority to grant consent to an applicant, but at the same time the authority must be able to justify its refusal based on the likelihood of the distribution causing defacement of the local environment. Under sub-paragraph (4) the principal litter authority may also

refuse consent if the applicant has been convicted of an offence, or, has paid a fixed penalty notice for the distribution of free literature without consent in a designated area, within the five years preceding the date of the application.

8.25 **Sub-paragraph (5)** enables the principal litter authority to place conditions on the consent if it considers that these are necessary or desirable for protecting the designated land from defacement or for the effective operation and enforcement of the Schedule. The ability to impose conditions on the consent may be a mitigating factor where the authority would otherwise refuse to grant consent. For example, if the authority is concerned that a particular distribution is likely to cause defacement of the designated area it may place a requirement on the distributor to clear up any such material which is discarded there.

8.26 Sub-paragraph (6) enables a principal litter authority to require a person distributing printed matter in a designated area to provide written evidence of the consent, on demand, to an authorised officer. It is therefore implicit in the legislation that any consent granted under the Schedule should be given in writing.

8.27 Under sub-paragraph (7) a consent may be revoked entirely, or in part, at any time, if the person to whom the consent was granted fails to comply with the conditions imposed on him or is convicted of an offence under paragraph 1 or pays a fixed penalty under paragraph 7. Similarly, under sub-paragraph (8) any condition imposed in relation to the consent may be varied or revoked at any time by notice to that person.

8.28 As sub-paragraph (7) only refers to the person to whom the consent was given, if principal litter authorities are granting authorisation to others under the consent the conduct of those persons may be dealt with as a condition. The person receiving the consent would then be subject to this, any breach of which would render the consent revocable.

Fees

8.29 Paragraph 4 authorises principal litter authorities to charge a fee for issuing a consent. The amount of this fee is for the authority to determine but it must not be more than is reasonable to cover the costs of operating and enforcing the Schedule 3A provisions in its area. For example, this may include: the initial survey of the area, administration of consents, notification procedures, and the monitoring and enforcement of restrictions. They may not include potential clean-up costs.

Appeals

8.30 The process for appeals by any person aggrieved by decisions in relation to a consent is outlined in Paragraph 5. Appeals may be made to the magistrates' court against a decision to refuse a consent, to impose any limitation or condition on a consent, or to revoke a consent.

Seizure of material

8.31 Paragraph 6 deals with the seizure of printed matter being distributed in a designated area.

If a person is found to be distributing free literature in a designated area without consent, an authorised officer of the principal litter authority may seize all or any of the material. This may be reclaimed by the person purporting to be its owner on application to the magistrates' court. The court must order the return of the printed matter to the owner if it is not required for legal proceedings brought by the authority under this Schedule. If the material is not reclaimed, and the authority does not know the name and address of the person from whom it was received, it may be disposed of or destroyed at the conclusion of proceedings for an offence; at the end of the time period in which proceedings may be brought; or, on discontinuation of any proceedings that have been initiated. In all other cases, the material must be returned.

Fixed penalty notices

8.32 Fixed penalty notices may be issued as an alternative to prosecution for the offence of distributing free literature without consent under **paragraph 7**.

Local authorities may set the level of the fixed penalty, or, if they choose not to do so, a standard default amount of £75 applies. **Paragraph 8** applies the wider definition of 'authorised officer' to the Schedule, so that local authorities may make arrangements with other persons to issue fixed penalties in addition to their own employees.

8.33 More detailed information on the application and use of fixed penalties is provided in the separate guidance available on fixed penalty notices.

Repeals

8.34 Section 4 of the London Local Authorities Act 1994 and sections 21 and 22 of the City of Newcastle-upon-Tyne Act 2000 are repealed by the Clean Neighbourhoods and Environment Act 2005. These local Acts previously allowed for the control of free literature distribution in London and Newcastle but are no longer necessary now that similar powers have been introduced on a national basis.

