

From: Pochin, Charlotte (Defra)
Sent: 28 October 2015 16:22
To: Peter Silverman
Subject: RE: Replacing Litter Clearance Notices

Peter,

I'm sorry it's taken me a while to reply to this. I've been in touch with colleagues in the Home Office, which leads on the Anti-social Behaviour, Crime and Policing Act 2014, to confirm my understanding of the new powers.

As I've said before, Defra cannot offer legal advice on individual cases, and we would therefore strongly encourage you to take your own legal advice, but we consider that a Community Protection Notice may be used in the circumstances you describe.

[Section 44 of the Anti-social Behaviour, Crime and Policing Act 2014](#) states that conduct which takes place on, or affects, premises that are owned, leased, occupied, controlled operated or maintained by a particular person is treated for the purposes of section 43 of the 2014 Act (the power to issue CPNs) as conduct of that person. In your example, this would mean that the occupier of the land could be issued with a CPN in respect of behaviour which takes place on, or affects the land, even if they are not personally responsible for the behaviour.

In order for a CPN to be issued in these circumstances, the other legal test for issuing a CPN - that the behaviour is having a detrimental effect on the quality of life of those in the locality, is persistent or continuing in nature and is unreasonable – would of course also have to be met. It would be for councils, police, and social landlords (if designated by the council to issue CPNs etc.) to consider whether a CPN is appropriate on a case by case basis.

The [explanatory notes for the 2014 Act in relation to Community Protection Notices](#) give two examples of CPNs potentially being used in this way (paragraph 163).

You should also note that a written warning has to be issued in the first instance before a CPN can be issued. The written warning must make it clear to the individual or body that if they do not stop the anti-social behaviour then they could be issued with a CPN. Local agencies may also wish to include other information in the warning letter such as:

- Outlining the behaviour that is considered anti-social, to ensure that there is little doubt over what needs to be done to avoid the CPN being issued;
- Outlining the time by which the behaviour is expected to have changed, to give the person or body a clear understanding of when the CPN might be served; and
- Setting out the potential consequences of being issued with a CPN – namely the potential sanctions for breach, which could act as an incentive for the individual or body to change their behaviour before a formal CPN is issued.

It is unlikely that statutory nuisance powers could be used in the example you give, because that regime only comes into play where the accumulation interferes with someone's comfort and use of their land. As you say, damage to visual amenity would not be sufficient to make an accumulation a statutory nuisance: the accumulation would need to be generating odours, encouraging pests etc.

Defra's guidance to councils on their powers and duties to keep land clear of litter and refuse does not refer to the statutory nuisance regime because it is unlikely that it would be relevant in that context. I suspect that it is unlikely in any case that a statutory nuisance would be permitted by the council to occur on land which the council itself was required to keep clear of litter and refuse. Separate guidance is available on [councils' responsibility to investigate statutory nuisances](#) etc.

Finally, councils also have powers under [section 215 of the Town & Country Planning Act 1990](#) to require the “proper maintenance of land” by owners/occupiers if the condition of the land is adversely affecting local amenity – though I’m not sure how widely this is used.

I hope this is helpful.

Best wishes,

Charlotte Pochin

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From: Peter Silverman
Sent: 06 October 2015 15:05
To: Pochin, Charlotte (Defra)
Subject: Replacing Litter Clearance Notices

Charlotte,

Thank you for your e-mail of 30th September which was a big help in bringing me up to date following the introduction of the [Anti-social Behaviour, Crime and Policing Act 2014](#) (ASBCPA).

You wrote that councils’ powers to issue Litter Clearance Notices, Street Litter Control Notices, and Litter Abatement Notices have all been replaced by the new powers introduced by the 2014 Act – either Community Protection Notices or Public Spaces Protection Orders, depending on the circumstances of the case.

I would like to explore with you how councils can now act against the occupier of commercial land where litter and/or waste has been allowed to accumulate. Specifically where it is deposited by customers and passers-by without the permission of the occupier. We could be talking about land surrounding a supermarket or a lorry park on a highway service station.

Under the old regime I understand the council could have issued a Litter Clearance Notice under EPA S92A. To do this they had to be satisfied that the land was defaced by litter or refuse so as to be detrimental to the amenity of the locality. The notice could require the occupier to clear the land and to take reasonable steps to keep it that way. Failure to comply was an offence and if the occupier did not act the Council could clear the refuse and charge him accordingly.

So, let’s look at what remedies are now available.

[ASBCPA S43 - Community Protection Notices \(CPN\)](#)

[Home Office – Reform of anti-social behaviour powers -Litter and rubbish](#) says the CPN replaces two current litter notices and can be used to deal with persistent littering and accumulations of waste as well. Where an individual or organisation can be identified as being responsible for the behaviour, this may be the most appropriate route.

In my scenario the occupier of the land is not responsible for the behaviour. A CPN could not therefore be used to get the land cleared and to ensure that the occupier, the only person in a position to do so, keeps it clear in the future .

ASBCPA S59 - Public Space Protection Orders (PSPO)

A PSPO would not apply in this case as it is difficult to see what activities could be prohibited. You could not prohibit people from using a supermarket or parking in a lorry park.

EPA S79 Statutory nuisance

The Home Office guide goes on to say that as well as the new powers available through this legislation (the ASBCPA) accumulations of litter and rubbish can also be dealt with as a statutory nuisance, where the behaviour is prejudicial to health or constitutes a nuisance.

In such cases a council can serve an abatement notice on person responsible for the nuisance, or where that person cannot be found, on the occupier of the premises. The Act says it is a valid defence if he can prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

However, a piece of land that was clearly defaced by litter or refuse so as to be detrimental to the amenity of the locality (and subject in the past to a Litter Clearance Notice) might not necessarily be regarded as constituting a nuisance.

I note that in your, i.e. the DEFRA's, [Litter and refuse: council responsibilities to keep land clear - How councils should deal with litter, refuse, dog mess and fly-tipping, and the penalties they can give](#) - you do not refer to this legislation.

EPA S59 - Powers to remove waste unlawfully deposited

In that same document you say that councils can [serve notice](#) to require occupiers or landowners to remove fly-tipped waste from their land. The link is to EPA S59. But S59 (3)(a) says no offence is committed if the occupier neither deposited, nor knowingly caused, nor knowingly permitted, the deposit of the waste.

Again, it would not therefore be applicable to my scenario.

All I can see that we are left with in this the possible use of the statutory nuisance legislation. Do you think it is applicable in the scenario I have put forward?

Otherwise have I understood things correctly?

Kind regards

Peter Silverman
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[Home Office - Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals](#)