

# Legislation and Government Guidance Relating to Litter

## Disclaimer

This document can only serve as a guide to, and synopsis of, the law and relevant guidance relating to litter. It does not constitute legal advice. It may not be comprehensive and it may be misleading if relied upon as a complete explanation of the legal issues involved. If any matter is to be acted upon, the full texts of all the Acts and relevant statutory instruments must be consulted.

## What is litter?

There is no statutory definition of litter. Littering is rather defined by the act of the offence of dropping or leaving it. Litter is most commonly assumed to include materials, often associated with smoking, eating and drinking, that are *improperly* discarded and left by members of the public; or are spilt during business operations as well as waste management operations. As a guideline a single plastic sack of rubbish should usually be considered fly-tipping rather than litter.

## What are the litter laws?

The police, police community support officers (PCSO's) and accredited persons under the Police Reform Act 2002, and authorised officers of litter authorities, have powers to take action involving fixed penalties against people who leave litter. Litter authorities are defined in section 88(9) of the Environmental Protection Act 1990 (EPA) and include any principal litter authority other than a county council (except where a county council has been designated by the Secretary of State), a Joint Board designated by the Secretary of State, the Broads Authority and parish councils; National Park Authorities (under schedule 9 of the Environment Act 1995) are also deemed to have the powers of litter authorities. Authorised officers of a litter authority can issue a Fixed Penalty Notice for littering payable within 14 days. The fixed penalty will either be £75, or another amount set by a principal litter authority for its area within a range prescribed by Regulations made by the Secretary of State.<sup>1</sup> This amount may be discounted by a specified amount if the alleged offender chooses to pay the fine within a specified lesser time. Average fines for court cases (under section 87 of the EPA) are around £95 but can rise to a maximum of level 4 on the standard scale (currently £2,500).

Under the Local Government Act 2003, section 119 allowed local authorities to retain monies raised through Fixed Penalty Notices for littering and dog fouling in order to assist those authorities with the costs associated with carrying out those enforcement functions. This provision has been repealed and replaced by section 96 of the Clean Neighbourhoods and Environment Act 2005.

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<sup>1</sup> Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006

Parish councils may also retain fixed penalty receipts further to Regulations made under section 97 of the 2005 Act. The Clean Neighbourhoods and Environment Act 2005 has amended many of the powers available to local authorities under the Environmental Protection Act 1990 to carry out enforcement actions. Amongst the changes, the amended provisions:

- Give local authorities new powers (Litter Clearing Notices) to require businesses and individuals to clear litter from their land;
- Strengthen existing powers for local authorities to require local businesses to help clear up the litter they generate (Street Litter Control Notices);
- Enable local authorities to restrict the distribution of flyers, hand-outs and pamphlets that can end up as litter;
- Make it an offence to drop litter anywhere, including private land and rivers, ponds and lakes;
- Confirm that cigarette butts etc. and discarded chewing gum etc. are litter;
- Make it an offence for a person to falsify or give incorrect name and address details when requested to by an authorised officer.

### **Environmental Protection Act (EPA) 1990 Part IV – Provisions relating to litter**

Part IV of the Environmental Protection Act 1990 contains powers and duties to enable certain bodies to manage litter and associated environmental issues on the land for which they are responsible. Under this Act, both duty bodies and citizens are given rights to take legal action to get areas cleaned up.

#### **Section 87: The Offence of Leaving Litter**

Section 87 of the Environmental Protection Act 1990 defines the offence of littering as the throwing down, dropping or depositing of litter on any land, including land covered by water, and leaving it. The land must be within the area of a principal litter authority and 'open to the air' (if the land is covered, but open to the air on at least one side, the offence only applies if the public has access to that land). Littering is an offence in public places as well as on private land unless the owner of that land has given permission for the dropping of the litter or a legal authorisation exists to do so. A litter offence can be prosecuted through a magistrates' court and carries with it a maximum fine of level 4 on the standard scale (currently £2,500).

#### **Section 88: Fixed Penalty for Littering**

Under section 88, the police, PCSOs and accredited persons authorised under the Police Reform Act 2002, and authorised officers of local authorities, National Park Authorities, the Broads Authority and parish councils, can issue a Fixed Penalty Notice as an alternative to prosecution.

The amount of the fixed penalty will be £75. However principal litter authorities may set another amount locally within a range of £50-£80 as provided in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006. The full amount must be paid within 14 days of the issue of the notice, but litter authorities have the option of allowing a discount for early payment. If the fixed penalty is not paid the enforcement authority should prosecute for the original offence in the courts. It is an offence if a person to whom an authorised officer proposes to give a Fixed Penalty Notice fails to give the officer his true and correct name and address details and, again, this offence can be prosecuted through the courts.

### **Section 89: Duty to Keep Land and Highways Clear of Litter**

This section sets out the legal duty to clear litter and refuse (including dog faeces) from relevant land and relevant highways to which the public has access (with or without payment). Section 89(1) of the Environmental Protection Act 1990 places a duty on certain bodies **to ensure that their land (or land for which they are responsible) is, so far as is practicable, kept clear of litter and refuse.**

Section 89(2) places a further duty on the Secretary of State in respect of motorways and a few other similar public highways, and on local authorities in respect of all other publicly maintainable highways in their area, **to ensure that the highway or road is, so far as is practicable, kept clean.**

Bodies with a duty under this legislation include the appropriate Crown Authority, governing bodies of designated educational institutions, principal litter authorities, the Secretary of State for certain highways, and designated statutory undertakers such as transport companies, train and tram operators, airports and port and harbour authorities.

A Code of Practice on Litter and Refuse is issued under section 89 to provide practical guidance on the discharge of this duty.

### **Code of Practice on Litter and Refuse (COPL&R)**

The Code of Practice states how bodies named under section 89 (as defined, where relevant, in section 86) of the Environmental Protection Act 1990, must comply with the duty to make sure that land under their control and to which the public has access (with or without payment) are kept free from litter and refuse, and certain highways under their control are kept clean, as far as is practicably possible. The document describes the acceptable cleansing standards and response times for relevant land and highways, according to how intensively different types of land use zones are affected by litter trends and human and other impacts.

The Duty relates to **relevant land**:

- Land which is open to the air (on at least one side) (except in relation to land belonging to statutory undertakers);
- Land which is under the direct control of the duty body;
- Land that is not a highway;
- Land to which the public is permitted or entitled to have access with or without payment;
- In the case of railway land, relevant land also includes areas of land to which the public is not permitted or entitled to have access, such as track and tracksides near stations and in urban areas.

The Duty relates to **relevant land** under the direct control (in England) of:

- Principal litter authorities (county councils, district councils and including unitary authorities, London Boroughs, the Common Council of the City of London and the Council of the Isles of Scilly);
- The appropriate Crown Authorities;
- Designated statutory undertakers (e.g. transport operators, canal, port and dock operators);
- Governing bodies of designated educational institutions.

And **relevant highways/roads** under the direct control of:

- Local authorities, including district councils, London borough councils, the Common Council of the City of London, the Council of the Isles of Scilly;
- The Secretary of State.

In practice, the responsibilities of the Secretary of State are exercised by the Highways Agency. The Secretary of State can transfer the responsibility for the cleanliness of specific relevant highways from local authorities to the appropriate highway authority or roads authority.

A highway is a relevant highway if it is maintainable at the public expense and is not a 'trunk road' that is a 'special road' (the Secretary of State has responsibility for these). Explanations of these terms can be found in the Highways Act 1980.

The Code of Practice on Litter and Refuse (which applied to England, Wales and Scotland) was first published in January 1991 by the Secretary of State under section 89 of the EPA. It was subsequently reviewed by an Advisory Group and substituted by a Code dated 1 June 1999, published by the Department for the Environment, Transport and the Regions (DETR). A third revision of the Code was published in April 2006 after a three-year research programme and a full

public consultation. This revision was made to bring the Code of Practice in line with changes made to legislation influencing the quality of public space introduced by the Clean Neighbourhoods and Environment Act 2005. For the full document please go to:

<http://www.defra.gov.uk/environment/localenv/litter/code/index.htm>.

The Code seeks to encourage duty bodies and other land managers to maintain their land within acceptable cleanliness standards. The emphasis is on the consistent and appropriate management of an area to keep it clean, not on how often it is cleansed. This is dependent on effective monitoring of environmental conditions and the coordination of a carefully prioritised cleansing regime in response to litter trends, weather patterns and human activity.

Compliance with the Code is expected through:

- (i) monitoring the cleanliness of areas according to a series of grades, and cleansing to ensure land is kept to an acceptable standard.
- (ii) cleansing a littered area to achieve the recommended standard within the response times set out for a range of land uses that are zoned according to how intensively pedestrianised and trafficked they are. Should the standards fall to unacceptable levels the response times are provided as a last resort.

It is a part of the duty to remove refuse. Refuse comprises any waste or rubbish and includes household and commercial waste, including fly-tipped waste. Dog faeces are treated (further to an Order under section 86(14)) as refuse when present on certain types of public land such as public footpaths, picnic areas, parks and recreation grounds, and are therefore required to be cleaned up by the duty body responsible for that land.

Highways (including motorways, trunk roads, roads maintained at public expense and certain rights of way) must be kept 'clean'. This means that as well as keeping them free from litter and refuse, they should also be cleansed of detritus. The removal of detritus is deemed to be practicable from metalled surfaces only. (It is recommended, but not a duty, that detritus is also removed from other hard surfaces.)

*Detritus*, which comprises small, broken down particles of synthetic and natural materials, arrives at the site through the same displacement effects associated with mechanical, human, animal and natural actions, most of which also determine the distribution of litter. Detritus includes dust, mud, soil, grit, gravel, stones, rotted leaf and vegetable residues, and fragments of twigs, glass, plastic and other finely divided materials. Leaf and blossom falls are to be regarded as detritus once they have substantially lost their structure and have become mushy or fragmented. A significant and

*avoidable* source of detritus is uncollected grass cuttings and weed growth from seeds germinating in moist detritus. Large accumulations of detritus built up over months and years can contribute to the 'uncared for' impression an area exudes.

Duty bodies are required to zone their land according to the zoning requirements implicated by the Code of Practice on Litter and Refuse. Land is zoned according to how intensively it is used by the public. Each zone has a response time within which the duty body should return land or highways to an acceptable standard.

Intensity of use is classified as follows:

- **High intensity of use** (busy public areas);
- **Medium intensity of use** ('everyday' areas, including most housing areas occupied by people most of the time);
- **Low intensity of use** (lightly trafficked areas);
- **Areas with special circumstances** (where issues of health and safety and reasonableness and practicability are dominant considerations when undertaking cleansing operations).

*Click here to view the Code of Practice on Litter and Refuse Table of Land Uses*

The revised Code applies in England only, the second revision remains current in Wales.

### **Section 91: Summary Proceedings by Persons Aggrieved by Litter**

This enables members of the public to apply to the magistrates' court for a Litter Abatement Order to get an area that is under the control of a duty body cleared of litter and refuse. Before exercising this right it is necessary to give five days' written notice, with details of the complaint prior to instituting. If the magistrates' court is satisfied that the complaint is justified it may issue a Litter Abatement Order, and the defendant will be required to pay for any reasonable costs that have been incurred by the complainant in making the complaint and bringing the proceedings. Non-compliance with the Order can lead to a maximum fine of up to level 4 on the standard scale (currently £2,500), plus a daily fine of one twentieth of that sum. An Order may not be awarded if the land is satisfactorily cleared – however the defendant will still have to meet the costs if the court agrees that the complaint was justified.

### **Section 92: Summary Proceedings by Litter Authorities**

Section 92 enables local authorities to take action where another body is failing to keep relevant land under its direct control clear of litter and refuse. The power to issue a Litter Abatement Notice is available to principal litter authorities other than county councils, and may be used where any

relevant Crown Land, or relevant land of a designated statutory undertaker or designated educational institution is defaced by litter or refuse, or the defacement is likely to recur.

A Litter Abatement Notice may specify either, or both, of the following:

- A requirement for the litter or refuse to be cleared within a certain time. In specifying a time period, local authorities should take into consideration the response times and guidance provided in the Code of Practice on Litter and Refuse for the type of land and litter in question.
- A prohibition on permitting the land to become defaced by litter or refuse.

It is an offence to fail to comply with a Litter Abatement Notice, punishable by a fine of up to level 4 on the standard scale (currently £2,500) plus a daily fine of one twentieth of that sum.

### **Sections 92A-92C and 94: Powers for tackling litter and refuse on private land**

Local authorities have a power to issue a Litter Clearing Notice under sections 92A-92C and 94 of the Environmental Protection Act 1990 where land that does not fall under the litter duty is defaced by litter or refuse. The Notice may require occupiers or landowners to clear up and, where appropriate, take steps to prevent it from becoming heavily littered again. If an occupier or the owner of land cannot be located after reasonable enquiry, the principal litter authority can serve the Notice by posting it on the property. The land must be restored within a specified period of not less than 28 days to a standard specified by the local authority under the terms of the Notice. Failure to comply with a Notice and its specific terms is an offence and the local authority can clean up the land and recharge the costs to the occupier or owner for doing so. Fixed Penalty Notices are available as an alternative to prosecution. This measure is intended to be used for problems associated with accumulations of litter. Fly-tipping and illegal waste operations are dealt with by separate legislation.

### **Sections 93 and 94: Street Litter Control Notices**

Local authorities can require owners or occupiers of certain types of commercial premises to prevent or remove accumulations of litter where it is evident that their business is contributing to the accumulation of litter to the detriment of the amenity of the area. Where a litter problem can be clearly traced to certain types of business, such as 'food on the go' establishments, mobile vendors or market stalls, a local authority can issue a Street Litter Control Notice. This requires the occupier, or the owner of a business or retail premises, to clear up litter and/or to implement measures to prevent the land from becoming defaced again. It is an offence to fail to comply with a Street Litter Control Notice. The Clean Neighbourhoods and Environment Act 2005 has amended sections 93 and 94 of the 1990 Act to make it an immediate offence not to comply with the



specifications of the Notice, thus dispensing with the requirement on the authority first to seek an order from the magistrates' court. A person found guilty of this offence may be given a fine of up to level 4 on the standard scale (currently £2,500). They may also be given the option of paying a Fixed Penalty Notice as an alternative to prosecution.

### **Voluntary Code of Practice for Food on the Go**

The Department for Environment, Food and Rural Affairs (Defra) has produced 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 landowners or occupiers to work together to resolve litter problems.

For more information see: <http://www.defra.gov.uk/environment/localenv/litter/pdf/fastfoodcop.pdf>

### **Section 94B and Schedule 3A: Distribution of free literature**

Local authorities can designate areas by Order, where it is an offence to distribute free printed materials such as leaflets and flyers. It is an offence for a person to distribute any free printed matter, or to cause another person to do so, without the consent of the authority, on any land that the authority has designated under this Schedule. Authorised officers can seize any materials that are being distributed in contravention of such an Order, and can issue a Fixed Penalty Notice of £75 (unless an alternative amount is specified by the authority). Designations are made under section 94B of, and Schedule 3A to, the Environmental Protection Act 1990.

### **Section 99, Schedule 4: Removal of shopping trolleys**

Schedule 4 of the Environmental Protection Act 1990 is an adoptive schedule under section 99 of the EPA which allows a local authority to seize, store and dispose of abandoned shopping and luggage trolleys in its area. Schedule 4 applies to any shopping or luggage trolley that appears to be abandoned on any land in the open air, including land that is covered by water. Certain types of land are however excluded, including land that has been designated by the local authority for the purpose of providing trolley parking facilities; land on which off-street parking is provided for shopping trolleys that have been used by customers; or land in which the owner of the trolley has legal estate.

The authority has the power to seize shopping and luggage trolleys thought to be abandoned. The authority must obtain the consent of the occupier of the land or may issue a Notice where an occupier cannot be located. The authority must hold on to the trolley for six weeks and must conduct reasonable enquiries to locate the owner of the trolley before the trolley can be sold or disposed of. The authority can reclaim the costs for recovery, storage and disposal from the



owner. The Clean Neighbourhoods and Environment Act 2005 has improved the ability for local authorities to reclaim these charges.

For the full Act go to:

[http://www.legislation.hmso.gov.uk/acts/acts1990/Ukpga\\_19900043\\_en\\_1.htm](http://www.legislation.hmso.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm)



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Table 1

	Type of zone			
	High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
Nature of the area	Areas which, through intense pedestrian and/or vehicular movements, are prone to fluctuations in litter and refuse and require both high levels of monitoring and frequent cleansing.	Areas affected by moderate levels of pedestrian and vehicular activity and therefore less prone to fluctuations in litter and refuse, usually situated outside centres of retail or commercial activity, but used regularly by members of the public.	Areas subject to low or infrequent levels of pedestrian and vehicular activity and therefore less prone to fluctuations in litter and refuse, often located in more rural areas.	Types of land where issues of health and safety and reasonableness and practicability are dominant considerations when undertaking environmental maintenance work (includes legislative restrictions for all land types).
Maximum response time to restore to grade A standard if it falls below grade B	<b>'½ a day'</b> <b>This means by 6pm if reported before 1pm or by 1pm the next duty day if reported between 1pm and 6pm on the previous day</b>	<b>'1 day'</b> <b>This means by 6pm the following evening</b>	<b>14 days</b>	<b>28 days or as soon as reasonably practicable</b>
<b>Type of land (duty applies to relevant land/highways within these categories – refer to specific guidance in s. 11)</b>				
Retail, office and commercial	Primary and secondary retail, office & commercial areas	Primary and secondary retail, office & commercial areas		
Housing land		Areas of housing (except those located within primary or secondary retail, office & commercial areas which fall within high intensity areas)		
Industrial areas		Industry/warehousing/retail parks		
Roads	Main roads and other highways running through the above areas	Main roads and other highways running through the above areas	Rural roads and other highways running through the above areas  Motorway and trunk road roundabouts and lay-bys, approach and slip roads connecting to these roads	Carriageway, verges and central reservations of motorways and trunk roads
Transport interchanges (Includes, railways, bus stations, ports, harbours, docks,	Publicly accessible areas in and around transport interchanges in busy public areas (most likely to be major	Publicly accessible areas in and around transport interchanges located in these areas (most likely to be	Public areas in and around transport interchanges located in these areas	Operational rail land within urban areas, not covered by other zones

airports, etc.)	airports, ports, harbours, bus, train, and tram passenger stations in cities and town centres and car parks)	suburban and important town harbours, bus, train and tram interchanges, car parks and haulage operations)	Also, Operational rail land between platforms and within 100m of platform ends	
Educational land  (Most schools, colleges and universities)		Land of designated educational institutions (most commonly schools, colleges and universities), during term time, other than weekends or half term holiday	Land of designated educational institutions (most commonly schools, colleges and universities), when being used for a purpose authorised by governing body or managers during holidays	
Public open spaces	Parks and open spaces located in busy public areas, or with strategic national importance, or parts of other open spaces subject to high intensity of use	Parks and open spaces located in areas as described above, or parts of other open spaces subject to medium intensity of use	Parks and open spaces located in areas as described above, or parts of other open spaces subject to low intensity of use	
Waterside land (Includes canal waterways, marinas, inland navigation towpaths and towpaths to which the public have access in urban areas)	Waterside land in areas with high intensity of use	Waterside land in areas with medium intensity of use	All other waterside land	
Beaches				Amenity Beaches should be generally clear of all litter and refuse between 1 May and 30 September inclusive. Individual local authorities should decide the level of cleanliness that they are able to provide to any non-amenity beaches, and where practicable, beaches must be inspected from time to time and cleaned as necessary
Other areas	Other busy public areas		All other areas	

*\*This is a simplified table to summarise the types of land that may fall under the direct control of duty bodies. Please refer to the full version of the Code of Practice on Litter and Refuse and to the necessary sections of the Environmental Protection Act for more comprehensive information on what forms relevant land for a duty body at <http://www.defra.gov.uk/environment/localenv/index.htm>.*



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