

## **CONTROL OF LITTER**

### **Introduction**

1. This Legal Topic Note sets out the law and procedures in relation to keeping public places free of litter. The Environmental Protection Act 1990 (“the 1990 Act”) gives principal authorities and highway authorities primary responsibility for the control of litter on highways and other areas of land to which the public have access. Local council powers and duties are set out towards the end of this Note. In addition, the owners and occupiers of land (including local councils) can be required to keep their land free from litter.

### **Definitions**

2. The definition of “litter” includes both litter and refuse, except in relation to the offence of leaving litter and the associated fixed penalty notice system. Litter includes the discarded ends of cigarettes and cigars and similar products (s.98 of the 1990 Act). It also includes discarded chewing gum, including bubble gum, and the discarded remains of other products designed for chewing.
3. “Refuse” should be regarded as having its ordinary meaning of waste or rubbish, including household and commercial waste, and can include fly-tipped waste. Dog faeces are to be treated as if they were refuse when on certain descriptions of public land. The types of land are set out in Article 2 of the Litter (Animal Droppings) Order 1991, which provides that the provisions of Part IV of the 1990 Act apply to refuse including dog faeces on—
  - a) a public walk or pleasure ground;
  - b) any public garden or recreation land (whether inclosed or not) with no more than 5% covered by buildings;
  - c) any part of the seashore above high tide level frequented by a large number of people and managed as a tourist resort or recreational facility;
  - d) an esplanade or promenade above high tide level;
  - e) land not part of a highway which the public are permitted to use on foot only and

which provides access to retail premises;

- f) a picnic site provided by a local planning authority or (on a trunk road) by the Minister; and
- g) local authority off-street parking places.

4. The following terms are defined in s.86 and s.98 of the 1990 Act and are used in this Note;

- a) “principal litter authority” (outside London) is a county council, a district council in England or a county borough council (in Wales);
- b) “designated statutory undertaker” is a person or body authorised by statute to carry on a railway, tramway, road transport, canal, inland navigation, port or airport business.
- c) “designated educational institution” includes universities, other further education establishments, county schools, academies and grant-maintained schools, but not independent (fee-paying) schools
- d) “relevant highway” is a highway maintainable at public expense (including a footpath, a bridleway and a byway), other than a motorway;
- e) “relevant land” of a principal litter authority is land open to the air on at least one side which is under the direct control of the authority and to which the public are entitled or permitted to have access with or without payment but excluding a highway;
- f) “relevant land” of a designated educational institution is land in the open air on at least one side under the direct control of the governing body of an educational institution designated by the Secretary of State.
- g) “relevant land” of a “designated statutory undertaker” is land under the direct control of any statutory undertaker to which the public are entitled or permitted to have access with or without payment. The Secretary of State has the power to designate other categories of statutory undertaker or land to which the public have no right of or consent to access. The Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991 for the purposes of Part IV of the 1990 Act prescribes as relevant land under the direct control of a designated statutory undertaker railway land within 100 metres of a station platform which forms an embankment, cutting, siding, level or junction (not in an enclosed depot or the like), or is within the rails or on the tracksides (but is not within a tunnel), or is on a viaduct or bridge as relevant land. Land including non-operational land, land used for freight only, unpaved or short (i.e. less than one kilometre) paved towpaths and land below mean high tide is not to be treated as relevant land of a designated statutory undertaker.

- h) “relevant Crown land” is land open to the air on at least one side occupied by a government department, the armed forces or other agency of the Crown and to which the public are entitled or permitted to have access with or without payment but excluding a highway

### **Duties of principal litter authorities and others**

- 5. The duty contained in s.89 of the 1990 Act to ensure that, so far as is practicable, the land for which they are responsible is kept clear of litter falls on–
  - a) a principal litter authority in respect of any relevant highway and relevant land;
  - b) the Secretary of State in respect of any motorway or other highway for which he is responsible;
  - c) a strategic highways company (that is, a company for the time being appointed under Part I of the Infrastructure Act 2015) as respects (i) any trunk road which is a special road for which it is the highway authority, and (ii) any relevant highway for which it is responsible
  - d) the appropriate Crown authority in respect of relevant Crown Land;
  - e) each designated statutory undertaker in respect of its relevant land;
  - f) the governing body or education authority of each designated educational institution in respect of its relevant land.
- 6. District councils and the Secretary of State must also keep clean the relevant highways for which they are responsible (s.89 (2) of the 1990 Act). This means that one authority is responsible both for cleaning and litter control in relation to any highway.
- 7. In relation to highways, the district council must comply with any directions given by the highway authority (county council or a non-metropolitan county) about use of traffic signs and barriers when cleaning as well as when it can be done (s.89 (6) of the 1990 Act).

### **Code of Practice on Litter and Refuse**

- 8. The Secretary of State is required to issue a code of practice giving practical guidance on these duties. The code, called the “Code of Practice on Litter and Refuse” was issued in 2006 under s.89 (7) of the 1990 Act and can be found at: [www.gov.uk/government/publications/code-of-practice-on-litter-and-refuse](http://www.gov.uk/government/publications/code-of-practice-on-litter-and-refuse).

9. The Code is divided into 3 sections as follows:

Part	Details
1	Part 1 encourages bodies 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 cleaned.
2	Part 2 contains advisory standards for graffiti and fly-posting.
3	Part 3 contains details of the legislative framework that surrounds this Code of Practice.

10. Part 3 of the Code is likely to be of particular interest to local councils as it sets out local council powers to tackle litter.

**Action by persons aggrieved by litter**

11. A person (other than a principal litter authority) may start proceedings in a magistrates’ court about litter on any relevant land or highway, or the lack of cleanliness of a highway or motorway (s. 91(1) of the 1990 Act). “Person” includes a local council.

12. Proceedings are brought against the person or body whose duty it is to keep the land in question free of litter or the highway clean. It is a defence to prove that the defendant person or body has complied with the duty. In relation to a highway it is a defence to show that the condition of the highway is due to the highway authority. Before beginning proceedings, the complainant must give the person or body at least five days’ written notice of his intention to do so specifying the nature of the complaint (s. 91(5) of the 1990 Act). If the magistrates’ court convicts the defendant, it may make a litter abatement order requiring him to clear up the litter within a specified time (s.91 (6) of the 1990 Act). Failure to comply with the order makes a convicted person liable to a maximum fine of level 4 on the standard scale (currently £2500), 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 (s.91 (9) of the 1990 Act).

In any proceedings for an offence under s. 91(9) it is a defence to show that the s.89 of the 1990 Act duty has been complied with (see paragraphs 5-7 above).

13. In any action the Code of Practice is admissible in evidence (s. 91(11) of the 1990 Act).
14. If the court is satisfied that the land or highway was defaced by litter or is unclean, and that there were reasonable grounds for bringing the complaint, it must order the defendant to pay the reasonable expenses of the complainant of bringing the matter before the court (section 91(12) of the 1990 Act).

### **Community Protection Notices**

15. The 1990 Act previously allowed for principal litter authorities to issue Litter abatement notices, Litter clearing notices and Street litter control notices. Sections 92-94A of the 1990 Act, which contained the powers to issue these notices, have been repealed by the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). S.43 of the 2014 Act introduced the Community Protection Notice ("CPN") in place of the repealed notices.
16. A CPN can be issued to an individual aged 16 or over or to a body by local authorities (that is, a district council or a county council for an area for which there is no district council in England and a county council or a county borough council in Wales) and others including police officers and, if designated by the chief constable, police community support officers. A CPN can be issued if the local authority or other relevant person is satisfied on reasonable grounds that (a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and (b) the conduct is unreasonable (s.43 (1) of the 2014 Act).
17. The CPN imposes any of the following requirements on the individual or body issued with the notice (s.43 (3) of the 2014 Act):
  - (a) a requirement to stop doing specified things (i.e. the behaviour or action that is having a detrimental effect on the quality of life of those in the local community should be set out);
  - (b) a requirement to do specified things;
  - (c) a requirement to take reasonable steps to achieve specified results
18. where those requirements are reasonable and have the aim of either preventing the effect of the conduct, or reducing it, or reducing or preventing the likelihood of it continuing or recurring.

19. A local authority or other relevant person may issue a CPN to an individual or body only if that person/ body has been given a written warning that the notice will be issued unless their conduct ceases to have the detrimental effect referred to in s.43 (1) of the 2014 Act, and (ii) the local authority or other relevant person is satisfied that, despite the person/ body having had enough time to deal with the matter, the person/ body's conduct is still having that effect. Before issuing a notice, the local authority or other relevant person officer is required to inform whatever agencies or persons he or she considered appropriate.
20. A person issued with a CPN may appeal to a magistrates' court against the notice on certain grounds as set out in s.46 of the 2014 Act. An appeal must be made within the period of 21 days beginning with the day on which the person is issued with the notice.
21. Breach of any requirement in the notice, without reasonable excuse, is a criminal offence, subject to a fixed penalty notice or prosecution. On conviction an individual would be liable to a fine not exceeding level 4 on the standard scale (currently set at £2,500). An organisation is liable to a fine of up to £20,000 (s.48 of the 2014 Act).

### **Controls on free distribution of printed matter**

22. A principal litter authority has the power to control the distribution of free literature to prevent it from becoming litter on designated land (s. 94B and Schedule 3A to the 1990 Act).

### **Fixed penalty notices: common provision**

23. In relation to fixed penalty notices associated with the offence of dropping litter (see below) and the distribution of printed matter the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales may make regulations which set a range within which a locally determined fixed penalty amount must fall. Such regulations may also restrict the extent to which and the circumstances in which an authority may permit the payment of lesser amounts. The Secretary of State in relation to England and the National Assembly for Wales in relation to Wales, by order, can change the default amount of the fixed penalty (s. 97A of the 1990 Act). The relevant regulations are, for England the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007) and for Wales the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008).

## **Public registers**

24. A district council in England and a county council or county borough council in Wales must maintain a register of orders restricting the distribution of free literature. The register must be available free of charge, at all reasonable times, for inspection by the public and to obtain copies of the documents on the register at a reasonable charge (s.95 of the 1990 Act).

## **Offence of leaving litter**

25. It is an offence to drop litter in a place open to the air on at least one side and to which the public has access with or without payment. It also includes relevant land owned by local authorities, statutory undertakers, designated educational institutions and Crown land (s. 87 of the 1990 Act).
26. The offence extends to dropping litter into bodies of water, such as rivers or lakes. The area of a local authority which is on the coast extends down to the low-water mark under s. 72 of the Local Government Act 1972. Therefore it becomes an offence to drop litter anywhere above the low water mark (and thus an offence to drop litter on beaches). A person guilty of this offence is liable on conviction to a fine of up to level 4 on the standard scale (currently £2,500) (s. 87(5) of the 1990 Act).
27. It does not extend the duty on principal litter authorities (and others) to keep their relevant land clear of litter and refuse as set out in s. 89 of the 1990 Act.
28. No offence is committed if the littering was authorised by law or done by or with the consent of the owner, occupier or person having control of the area.

## **Fixed penalty notices for leaving litter**

29. An authorised officer of a litter authority (which for this purpose includes a local council) may give a person who he has reason to believe has dropped litter a notice offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty (s.88 of the 1990 Act).
30. A principal litter authority can specify the amount of fixed penalty in its area; where the authority sets no such amount the default fixed penalty is £75. S. 97A of the 1990 Act

enables regulations to be made by the Secretary of State or the National Assembly for Wales to set a minimum and maximum range within which the fixed penalty amount can be set (see paragraph 16 above for the regulations). The litter authority may treat the fixed penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

31. Subsections 88(8A) to (8C) of the 1990 Act permit an authorised officer of a litter authority who proposes to give a person a fixed penalty notice, to require that person to give the officer his name and address. It is an offence for that person to fail to do so or to give false or inaccurate information and on conviction the offender is liable for a fine up to level 3 of the standard scale (currently £1,000).
32. S.88 (11) of the 1990 Act empowers the Secretary of State or the National Assembly for Wales to make regulations prescribing conditions that must be met by an individual before he can be authorised by a local council to issue fixed penalty notices. See paragraph 16 above for these regulations.
33. The description of an “authorised officer” includes individuals other than the authority’s own employees (s. 88(10) of the 1990 Act).

### **Duties and powers of local councils**

34. A local council has the following powers:
  - to prosecute as an aggrieved person (s. 91 of the 1990 Act);
  - to issue a fixed penalty notice for leaving litter (s. 88 of the 1990 Act); and,
  - to publicise the penalties for dropping litter (s. 87(6) of the 1990 Act).
35. Local councils may not wish to utilise their litter powers if existing byelaws suffice or there are insufficient financial and human resources to implement the powers. The expenditure involved in enforcing prosecutions or payment of penalty notices will, in many councils, exceed the income generated from successful prosecutions and payment of fines. These factors will need to be weighed up against the demand for the powers within the community and the benefits to be enjoyed from effective enforcement.
36. All councils which adopt the statutory powers need to appoint or designate officers in respect of their enforcement (these may be existing officers or those whose sole duties relate to enforcement work).

37. The charitable organisation Keep Britain Tidy offers training that can be catered to local councils. Further information can be found at the Keep Britain Tidy website <http://www.keepbritaintidy.org/home/481> or by calling 01942 612621
38. A local council may provide and maintain litter bins and, in the places where it does so, may erect notices about the leaving of litter (s.5 of the Litter Act 1983 (“the 1983 Act”). The bins provided must be regularly emptied and cleaned. Bins and notices must not be placed on land not belonging to a council without the consent of the owner and occupier of that land; if they are placed in a highway, the consent of the highway authority is required (Schedule 1 to the 1983 Act). Consent cannot be unreasonably withheld, but may be given subject to any reasonable conditions, such as a requirement to remove the bin or notice on the expiration of a reasonable period of notice.
39. A local council may contribute to the reasonable expenses of another person or another local council in providing litter bins or notices and may combine with one or more other local councils to provide litter bins. A county or metropolitan district council may contribute towards the expenses incurred by a local council in providing bins or notices (s. 6 of the 1983 Act),
40. Some local councils provide street cleaning and similar services. They may lawfully do so as agents of a district council in accordance with s.101 of the Local Government Act 1972) or through the Community Right to Challenge. Before starting to provide such services, a local council should consult with the district council so as to achieve (if possible) a proper sharing of responsibilities.

### **Abandoned trolleys**

41. A district council in England and a county council or county borough council in Wales may resolve to apply the provisions of Schedule 4 to the 1990 Act in its area. Before doing so it must consult those who appear to the council to be affected by the application of the Schedule. A resolution to apply the Schedule must be publicised in at least one newspaper circulating in the area and it comes into effect on the specified date which must be at least three months later. The authority must review the power from time to time in consultation with those who appear to be affected by it (s.99 of the 1990 Act).

42. The effect of applying the Schedule is to permit an authorised officer of the council to seize and remove shopping and luggage trolleys which appear to the officer to have been abandoned on land in the open air. For this purpose a luggage trolley is one provided by a railway, tramway road transport or airport operator. The Schedule does not apply to trolleys found on:
- I. land owned or leased by the trolley owner;
  - II. land provided at an off-street parking place for shoppers to leave shopping trolleys;
  - III. land designated by the council as a place for leaving shopping trolleys; or
  - IV. land used by railway, tramway, road transport and airport operators for leaving luggage trolleys (Schedule 4 paragraph 1 to the 1990 Act).
43. Where a trolley is found on land appearing to be occupied, the trolley cannot be removed without the consent of the occupier, unless the council has served a notice on him stating that it proposes to remove the trolley and he has not within 14 days objected to the removal (Schedule 4, paragraph 2 to the 1990 Act).
44. Having seized a trolley, the council must as soon as reasonably practicable (but not later than 14 days) thereafter inform the owner (if any), tell him where the trolley is being kept and that, if it is not claimed within six weeks, the council may dispose of it. The owner must pay the collection charges (if any) levied by the council. Before disposing of a trolley the council must make reasonable efforts to trace the owner (Schedule 4, paragraph 3 to the 1990 Act).
45. In fixing the level of collection charges the council must ensure that it covers the cost of removal, storage and disposal taking one year with another (Schedule 4, paragraph 4 to the 1990 Act). In other words no profit is to be made from the charges.
46. The council may, in agreement with trolley owners (e.g. supermarket operators), set up a scheme whereby the owners provide an organised collection service for their trolleys. Where such a scheme is in operation, the council cannot levy collection charges in respect of trolleys covered by the scheme.

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
17	Control of Dogs	Sets out the powers of a local council in respect of dogs and dog faeces.

70	The Local Environment	Sets out the powers of principal authorities in respect of nuisances and related matters.
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