



Technical Briefing

Supporting advice for the Code of Practice on
Litter and Refuse (Scotland) 2018

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Note: This information is for advice only and does not constitute legal guidance.

1 Introduction

The Code of Practice on Litter and Refuse (“the code”) is a statutory guidance document issued under Section 89 (7) of the Environmental Protection Act 1990 (“the Act”).

It provides practical guidance on fulfilling the duties under Section 89 (1) and (2) of the Act. These duties require certain organisations to:

Duty 1: ensure that their land (or land which is under their control) is **kept clear** of litter and refuse. This includes motorways, trunk and local authority roads.

Duty 2: ensure that their motorways, trunk and local public roads are **kept clean**.

Organisations which are subject to the duties should have regard to the code which:

- focuses on prevention as a means of meeting the duties
- specifies grades to indicate the presence of litter, refuse and detritus
- outlines categories for zoning land based on the potential for land to deteriorate
- provides maximum timescales for restoring areas to grade A; timescales are influenced by both the grade and zone

The code is an authoritative statement of practice and differs from legislation in that it offers guidance in fulfilling the legal requirements of the Act and is admissible in evidence in court proceedings if a body is taken to court for dereliction of its duties under section 91 or 92 of the Act. Courts must take it into account in legal proceedings where it is relevant to issues in the case.

The Code of Practice on Litter and Refuse 2018 is the 4th version - the first was published in 1991 and replaced in 1999, with both of these applicable to England, Scotland and Wales. The third revision, published in 2006, was the first to apply exclusively to Scotland.

The code was reviewed by the Scottish Government following recommendations from a steering group and a new version was published in June 2018. The new code takes a fresh and more sustainable approach to fulfilling the duties of the Act and contains a number of changes and points of clarity.

2 Summary of key changes to CoPLAR 2018

There are no legislative changes; however the new code provides a fresh focus and contains a number of changes and points of clarity detailed in the table below.

Duty holders will be encouraged through statutory guidance to align their services towards a preventative approach, introducing flexibility which allows them to use their resources and time in a different way.

Area	CoPLAR 2006	CoPLAR 2018
Defining the duties	Guidance is focused on Duty 1 – to keep land clear of litter and refuse	Guidance of both duties defined under section 89 <ul style="list-style-type: none"> • Duty 1 to keep land clear of litter and refuse • Duty 2 to keep roads clean
	Meeting the duty is focused on the cleanliness of an area	Meeting Duty 1 shifts focus to other means of keeping land clear such as prevention activities, providing greater flexibility in how land is maintained to meet the Duty and moving towards

		long term prevention/reduced reliance on clean up.
Duty Bodies/Statutory Undertakers	Identifies all duty bodies and statutory undertakers as per section 89 of the EPA 1990 and The Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991	No significant change made
Relevant Land	Land which is open to the air on at least one side and which the public is permitted access to. Exception to this is railway trackside land which the public are not entitled to access	No change has been made to the definition provided in CoPLAR 2006 or the Environmental Protection Act 1990; however clarity is provided to highlight the types of publically accessible land that is subject to the duties, including soft and hard standing surfaces and land covered by water e.g. canals and ponds
Response Times	<p>Maximum response time based on zone/land use – seasonal</p> <p>No response times for Duty 2</p>	<p>For Duty 1, four bands of response times have been introduced for each zone, based on the level of prevention investment.</p> <p>The new response times are based on a number of factors:</p> <ul style="list-style-type: none"> • Investment in preventative activity • The amount and/or volume of the litter or the grade of an area - i.e. the more litter, the more quickly it should be restored • The potential for litter to be generated based on the zone category for the area • Any special considerations and health and safety reasonableness and practicability <p>Additionally separate response times for Duty 2 are now included to provide a framework for duty holders to work to.</p>
Zones	11 zones with sub-categories based on location and land use generally based on use of an area	<p>6 zones: 1 - 5 based on intensity of footfall and number of litter generators, to identify areas from 1 the highest risk of litter pollution to 5 the lowest risk of litter pollution.</p> <p>Zone 6 is to take account of areas where health and safety is taken into consideration, such as road closures - this includes roads above 40mph and</p>

		operational railway land (>100m from platform) The zones are based on quantifiable factors to allow accurate comparison across similar land types
Grades	<ul style="list-style-type: none"> • Four grades A – D • Photographs • Description of each grade • No grades for Duty 2 	<ul style="list-style-type: none"> • Grades A-F for Duty 1 • Updated photographs • Number of items count is included in description to provide a way of verifying grade application • Grades A-D now included for Duty 2, including descriptions and photographs
Prevention	A holistic approach to litter management is described within Part II including an overview of litter management options and recommendations	<p>Prevention is put on an equal footing with cleansing throughout the main code document.</p> <p>High level prevention activities are defined in the code, with a separate website to house good practice and guidance.</p> <p>Extended response times are given for areas where prevention activity is implemented.</p>
Items in scope	Definitions provided for litter and refuse including dog faeces	<p>Definitions provided for litter and refuse for Duty 1 and detritus for Duty 2</p> <p>Chewing gum: allowances made for the practical issues of removal: included as a special consideration</p>

3 Details on each section

3.1 Responsibilities

Duty Bodies and Statutory Undertakers are responsible for meeting the duties.

Duty 1 applies to Local Authorities, Scottish Ministers, Crown Authorities, Crown Estate, Educational Institutions and Transport Operators

Duty 2 applies to Local Authorities and Scottish Ministers

A more detailed list can be found [here](#).

It is however important to recognise and communicate that everyone has a responsibility to keep Scotland clear of litter and flytipping from individuals, to businesses, to industry. In terms of litter, individually we should all be disposing of our recycling items we use on the go - either by using the next bin or recycle on the go unit, or taking our waste home. We also have a duty of care to make sure our waste doesn't become flytipping.

3.2 Relevant Land

Duty 1 - This duty applies to all publically accessible relevant land and roads owned or managed by Duty Bodies and Statutory Undertakers.

It includes all types of land: hard standing surfaces (roads, pavements, walkways etc.), soft standing surfaces (vegetation, verges, embankment and open spaces) and land covered by water (canals and ponds).

Duty 2 – This duty applies to roads managed by Local Authorities and Scottish Ministers.

3.3 Materials

3.3.1 *Duty 1* –

Litter is considered to be “waste in the wrong place” where individual or a small number of items are thrown down, dropped or deposited in a public place by any person and left there. In addition, other provisions within the EPA require appropriate and sufficient waste collection containers to be used to prevent material from escaping. Escaped materials should be treated as litter. Materials that could be considered as litter are wide ranging, including: food packaging, drink containers, smoking related materials including cigarette ends, chewing gum, food items, paper and plastic bags.

Refuse should be regarded as waste material or rubbish, including household and commercial waste, flytipped waste, dog faeces⁹, animal carcasses and car parts. Refuse tends to be larger items than litter.

3.3.2 *Duty 2* – *A key consideration for meeting Duty 2 is the removal of detritus*

Detritus can include dust, mud, soil, grit, gravel, stones, rotted vegetation, and fragments of twigs, glass, plastic and other materials which can become finely divided. Leaf and blossom falls are to be regarded as detritus once they have substantially lost their structure and have become mushy or fragmented

3.4 Prevention

Prevention relates to taking steps to stop litter and flytipping happening in the first place and to minimise their reoccurrence. It means moving away from reactive operational services, such as clearing litter, to an approach which invests in a range of tactics to prevent litter and flytipping, thus addressing the problem before it becomes a bigger problem.

The Commission on the Future Delivery of Public Services (The Christie Commission) established that prevention in public service is more efficient than treatment. Prevention of litter and flytipping from occurring in the first place reduces the need for expensive clean-up operations - currently over £1 million per week of public money is spent on clearing up litter and flytipping in Scotland.

A more holistic approach is required to remedy this avoidable issue.

Duty holders will be expected to strike a balance between ensuring the duties are still met and the implementation of prevention measures. Prevention tactics should be evidence based, identifying the contributing factors to the problem and putting a plan in place to implement and evaluate solutions to tackle the problem at source. Where there is a possibility that short term build-up of litter and refuse will occur whilst preventative measures are being put in place, duty holders will be expected to have a strong communications plan in place to avoid unjust complaints and allow the preventative initiative to take effect.

Duty holders will be armed with a series of options to help them implement prevention initiatives which encourage personal responsibility and behaviour change across a number of target audiences.

3.4.1 Prevention includes:

- Communications and engagement – encouraging people and organisations to dispose of their litter and refuse responsibly through channels such as information displays, campaigns, education, training and community engagement.
- Partnership working – working with other organisations or internal departments to ensure a joined up approach to litter and flytipping management and prevention
- Infrastructure – improving the services and facilities available to allow responsible reuse, recycling and disposal of waste items.
- Improved monitoring – Gathering better data to target resources more effectively and monitor the effectiveness of initiatives
- Enforcement – strengthening the deterrent effect of legislation

Monitoring of prevention and operational provisions is key to ensure that prevention approaches are having the desired effect and to identify gaps in service delivery. Cleansing provisions should only be phased out in areas where evidence is available to indicate that prevention measures are having a positive impact.

Benefits of Investing in Prevention:

- Targeted, evidence based, strategically led preventative tactics can have big positive impacts on service delivery
- Increased partnership working and sharing resources
- Sustainable service provision and long term efficiency
- Targeted use of resources and assets
- Improved Local Environmental Quality

A detailed list and good practice can be found [here](#)

3.5 Grades

The Code of Practice on Litter and Refuse (Scotland) 2018 outlines a series of grades of cleanliness or standards for both Duty 1 and Duty 2.

Duty 1 is graded from A-F; the standards provide a way to evaluate how bad the litter problem is by providing a guideline number of items for each grade.

Increasing the number of grades provides greater granularity whilst having quantifiable numbers allocated to each maximises consistency and transparency. The grades are different from the A-D grades outlined in the 2006 CoPLAR and should therefore not be compared against one another.

In order to fully meet the requirements of the duty all relevant land should be kept to a grade A. However as it is not always possible to achieve this, at all times, land should be restored to a grade A on a regular basis.

Duty 2 is graded from A-D depending on the build up of detritus - there a series of photographs included in the Code of Practice on Litter and Refuse to help determine the scale of the detritus build-up.

You can find out more about standards [here](#).

3.6 Zones and Restoration Times

3.6.1 Zones

The Code of Practice on Litter and Refuse (Scotland) 2018 provides guidance to duty holders to allow them to apply zones to their land. The zones categories are based on the risk of litter and refuse

occurring in different areas dependent on the number of people/vehicles using the area and the types of premises in the area that may contribute to litter.

For example: a busy city centre has more people and more businesses than a rural road with a few residential properties and limited vehicle movement, therefore the city centre is likely to become littered more quickly.

You can find out which zone category your area is by contacting your Local Authority or other relevant body.

More information on zones can be found [here](#)

3.6.2 Restoration Times

Restoration times are provided in the Code of Practice on Litter and Refuse (Scotland) 2018 to set a maximum time that duty holders have to restore an area to the grade A standard. Restoration times are based on:

- Investment in preventative activity
- The amount and/or volume of the litter or the grade of an area - i.e. the more litter, the more quickly it should be restored.
- The potential for litter to be generated based on the zone category for the area.
- Any special considerations and health and safety reasonableness and practicability.

More information on restoration times can be found [here](#).

3.7 Resources

Scottish Government will be providing support, via Zero Waste Scotland (ZWS), to support organisations including:

- Individual support
- Further information on the ZWS website
- Opportunities to develop and cascade best practice
- Assistance with zoning

Whilst the updated code includes some changes, the duties themselves have not changed. Focusing on prevention is more efficient and sustainable than treatment, as established by the Commission on the Future Delivery of Public Services Commission (The 'Christie Commission').

Upskilling of workforces will provide opportunities for staff to develop skill sets which will support the implementation of a more preventative approach.

3.8 Private Land

There have been no changes to the legislation to include private land under section 89.

Local Authorities have powers via the Environmental Protection Act Section 90 and 93 to make certain types of land subject to the same requirements as "relevant land" by designating the land as a litter control area or by issuing a street litter control notice.

The Town and Country Planning (Scotland) Act 1997 also enables a local authority to require specific steps to remedy the land's condition if they consider that it adversely affects the local area.

The Scottish Environmental Protection Agency (SEPA) can also take enforcement action where waste on private land poses a risk to the environment.

Additional information on other legislative powers can be found [here](#).

4 Key Messages

- Clearing litter and flytipping is estimated to cost £1million per week in Scotland - this is an avoidable expenditure
- Investing in prevention measures to change behaviours and increase personal responsibility is more sustainable than continuing expensive clear up regimes
- The code of practice on litter and refuse 2018 provides clear and transparent guidance on fulfilling the duties of section 89 (1) and (2) of the Environmental Protection Act 1990
- The Code of Practice on Litter and Refuse 2018 is the first statutory guidance which places prevention on an equal footing with cleansing activity
- The new Code provides clearer guidance on land that is covered by the duty, to aid organisations in making sure they are fulfilling their requirements
- Restoration times take account of how quickly an area is likely to deteriorate and prioritise action in areas where significant accumulations of litter, refuse and/or detritus occur i.e. those areas that are going to be most objectionable to the public.
- The Code specifies grades to indicate the presence of litter refuse and detritus, and response times for clearing these materials, in order to fulfil the duties. The increased number of grades for litter and refuse provides greater granularity, whilst quantifiable numbers allocated to each increases consistency and transparency.
- Zones are categories of land, based on footfall and presence of potential litter source, which influence response times. The rationale behind zone allocation is based on the potential for litter and refuse to occur - the more quickly an area deteriorates, the more quickly it should be restored.

- Prevention of litter and flytipping requires a holistic approach and a range of tactics to influence behaviour change across a broad range of target audiences
- Partnership working is required to achieve a collective impact - this includes joined up working with both internal and external agencies
- Duty holders may have the responsibility to keep land clear but individuals and businesses responsibility to prevent litter and flytipping by:
 - reducing the use of disposable items such as drinks containers – e.g. refillable coffee cups
 - using recycling facilities where possible
 - using a bin for items when on the go or take them home to dispose of properly (this includes food, cigarettes and chewing gum)
 - ensuring recycling and waste bins are secured when presented for collection to avoid any items spilling out
 - using reuse facilities to drop off unwanted furniture and other items
 - making use of authorised recycling and waste collection services and drop off points (it is important to make sure waste items are given to an authorised waste collection company and checks made on where they intend to dispose of the materials)

For further information and frequently asked questions visit

www.zerowastescotland.org.uk/COPLAR

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