

Code of Practice on Litter and Refuse



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Introduction

1.0 Codes of Practice on Litter and Refuse

1.1 The Environmental Protection Act 1990 imposes duties under section 89(1) and (2) on certain landowners and occupiers (referred to throughout as 'duty bodies' and described in detail at section 3.2) to keep specified land clear of litter and refuse, and on local authorities and the Secretary of State to keep clean public highways for which they are responsible. This document provides a practical guide to the discharge of these duties.

1.2 This is the third Code of Practice on Litter and Refuse. The first was published in January 1991 by the Secretary of State under section 89(7) of the Environmental Protection Act 1990. It was substituted by a Code dated 1st June 1999 published by the Department for Environment, Transport and the Regions. These versions were both applicable to England, Scotland and Wales. This third revision replaces the previous Code. It is the result of an extensive research programme and review overseen by a Stakeholder Advisory Group. **It applies to England only.**

1.3 **Part 1** contains a Code of Practice (referred to throughout as 'the Code') issued under section 89(7) of the Environmental Protection Act 1990. Where land is defaced by litter and refuse and action alleging dereliction of the section 89 duty is taken in court under section 91 or 92 of the Act, this Code is admissible in evidence in the proceedings.

1.4 It seeks to encourage duty 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.

1.5 Previous Codes have referred to the issue of practicability. This Code seeks to outline in more detail what might be considered by a court of law to be practicable on different types of land. However, it will be for the court to agree what is appropriate in a particular instance.

1.6 **Part 2** contains advisory standards for graffiti and fly-posting. Such defacement, even if partially removed, has an adverse affect on the quality of the environment and can lead to an increase in crime. Even if all of the litter and refuse were cleared,

the public would perceive the area to be defaced if graffiti and/or fly-posting were still present. In recognition of this Central Government extended the cleanliness indicator (BV199), reported annually by local authorities, to include these elements from April 2005. Whilst these standards do not form part of their statutory duties, it is recommended that all duty bodies, in managing the litter and refuse on their land, seek also to manage these issues.

1.7 **Part 3** contains details of the legislative framework that surrounds this Code of Practice.

1.8 Good practice to assist land managers in the discharge of this duty is available through www.cleanersafergreener.gov.uk.

1.9 It is envisaged that this document can and should also act as a guide to other managers of land that are not subject to the section 89 duty, such as registered social landlords and arms-length management organisations, in the management of the land for which they are responsible.

2.0 Why you should be interested in this code

2.1 **The quality of the local environment is important to people.** Local environmental quality has several dimensions. These include:

- how places look and are perceived;
- how safe and happy people feel about living in an area; and
- how attractive areas are to workers, visitors and existing and new business investors.

Achieving and sustaining a high local environmental quality is important for all land managers, whether you are a business, a transport operator, a local authority, a landlord or an individual householder.

2.2 High local environmental quality helps to:

- secure quality, long term commercial investors;
- attract and retain workers with scarce skills;
- meet landowners' and tenants' legal obligations and liabilities;
- attract good, long-term tenants, minimising voids and repairs costs;
- deter anti-social behaviour and some criminal activities;
- secure the approval of electors, for whom local environmental quality is a fundamental test of an administration's efficiency and effectiveness; and
- create environments that are more easily maintained and less subject to vandalism.

2.3 Your land can contribute to, and is affected by, litter on others' land.

This country is made up of a patchwork of abutting areas of land owned, tenanted and managed by a myriad of public and private agencies and individuals. Unmanaged litter and refuse from your land moves, blows or flows onto the land of others, and theirs onto yours. Government, through this code, is encouraging good land management through the awareness of circumstances that will lead to increased litter and refuse at particular times.

2.4 Powers are available to require others to clear their land of litter. The Clean Neighbourhoods and Environment Act 2005 has extended a range of enforcement powers for local authorities to compel businesses, private land owners, occupiers and managers to recognise their role in contributing to the quality and appearance of the local environment.

2.5 Government encourages the public to take more responsibility. Under the Clean Neighbourhoods and Environment Act 2005, enforcement powers have been extended and widened to help tackle problems such as the leaving of litter, dog fouling and a range of environmental crimes such as fly-tipping and graffiti.

Local authorities have new powers to serve a Litter Clearing Notice on any land, requiring the occupier, or failing that, the owner, to clear litter from that land. If the notice is not complied with they can enter the land, clean up and then reclaim their costs (Part 3 contains further details on legislation). Duty bodies may find it helpful to encourage voluntary groups to assist in cleaning areas.

2.6 The Environmental Protection Act 1990 gives a person the right (under section 91) to take legal action to require a duty body to remove litter on its land where this falls below the acceptable standard set out in the Code for longer than the period specified. If the Magistrates' Court is satisfied that the duty body is in dereliction of its duty under section 89, it may make a Litter Abatement Order, requiring the duty body to clean up.



Part 1: Code of practice on litter and refuse

Issued under section 89(7) of the Environmental Protection Act 1990.

3.0 What are the duties?

3.1 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 (defined in 5.0 below).

3.2 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. This is in addition to the section 89(1) requirement and therefore means removal of detritus as well as litter and refuse (all defined in 5.0). The removal of detritus is deemed to be practicable from metalled surfaces only. It is recommended, but not a duty, that detritus (see 5.0) is also removed from other hard surfaces.

4.0 Who do these duties affect?

4.1 These duty bodies are:

- Principal litter authorities;
- Appropriate Crown authorities;
- Designated statutory undertakers;
- Governing Bodies of designated educational institutions;
- Local Authorities as respects any relevant highway for which they are responsible; and
- The Secretary of State as respects any trunk road that is a special road and any other relevant highway or road for which he is responsible;

definitions of which are provided in section 86 of the Environmental Protection Act 1990. Defra has published guidance on Part 4 of the Environmental Protection Act 1990 and these definitions are covered in detail in that document (can be viewed at: www.defra.gov.uk/environment/localenv/index.htm)

4.2 These duties relate to the duty body's relevant land and relevant highways/special roads, definitions of which are provided in section 86 of the Environmental Protection Act 1990.

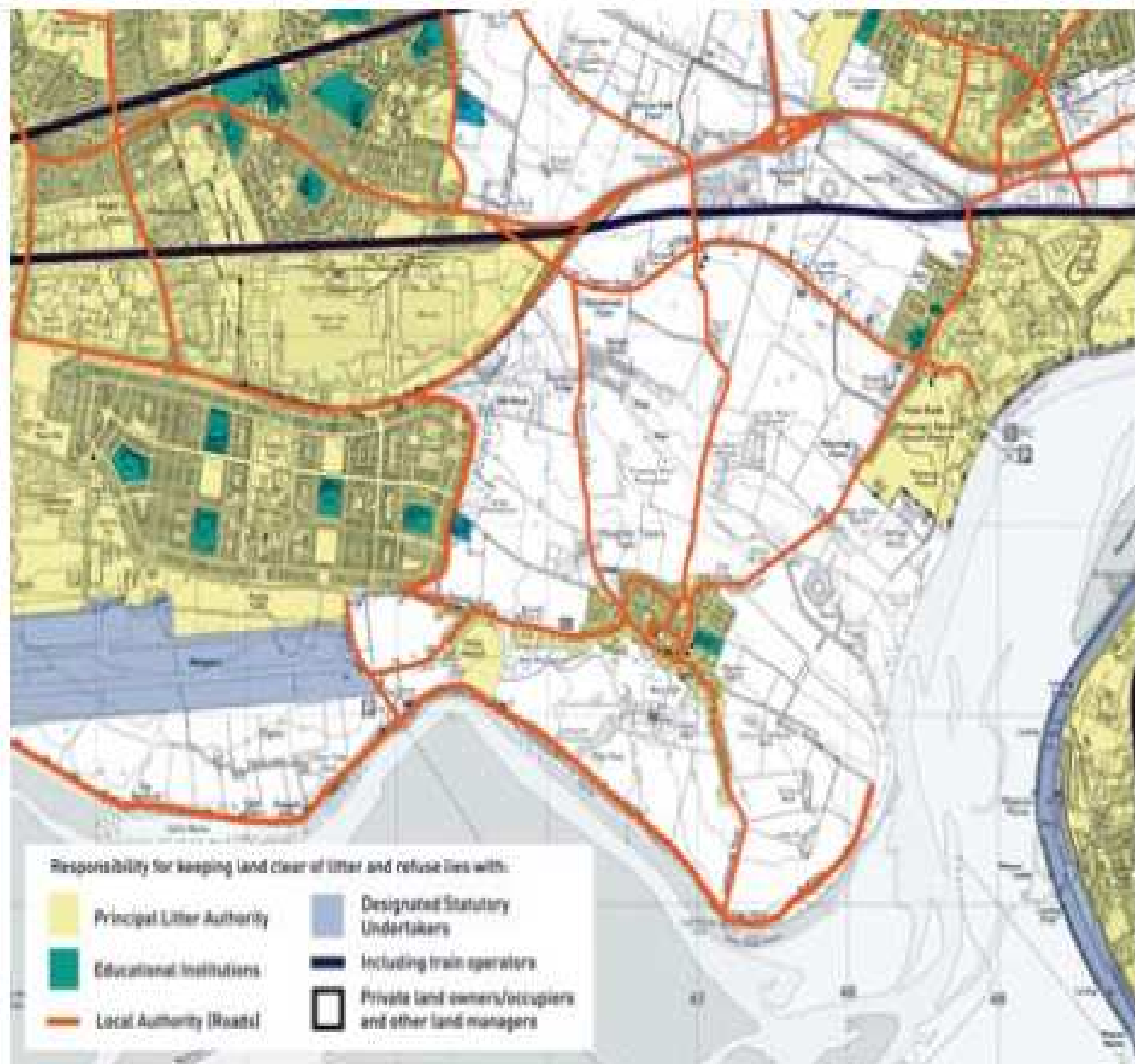


Figure 1 – Example of the designation of litter clearance responsibilities by land type under the Environmental Protection Act 1990

Again, further information on these descriptions is available in Defra's guidance on Part 4 of the Environmental Protection Act 1990 (can be viewed at: www.defra.gov.uk/environment/localenv/index.htm)

4.3 These duties are not transferable. If a duty body contracts a private company or another agency, for example a cleansing contractor or a parish council, to carry out cleansing on its behalf, the duty body remains responsible if the land is not maintained to acceptable standards. Similarly, within Business Improvement Districts, the duty body for that land is still responsible for ensuring that the statutory requirements are met.

4.4 Previously, the duties also related to relevant land within a Litter Control Area, as defined under section 90 of the Environmental Protection Act 1990. The Clean Neighbourhoods and Environment Act 2005 repealed this section and instead a Litter Clearing Notice may be served under section 92(A) of the 1990 Act on any land, requiring the occupier or, if unoccupied, the owner, to clear that land of litter and take steps to prevent its reoccurrence of littering. For further details see Part 3.

4.5 **Figure 1** provides an example of the land areas for which different duty bodies are responsible.

5.0 What comprises litter and refuse?

5.1 The 1990 Act does not provide a comprehensive definition of litter or refuse, although the courts have considered the definition to be wide; (certain matters which are included are described in section 98(5A) – see 5.3 below). The following summarises common definitions used in cleansing contracts and is provided purely as a guide:

5.2 *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 (see section 5.7 overleaf) a single plastic sack of rubbish should usually be considered fly-tipping rather than litter.

5.3 Under section 98(5A) of the Environmental Protection Act 1990, certain discarded smoking-related materials (cigarette ends, etc.), and discarded chewing gum and the remains of other products designed for chewing, are specifically stated to be items of litter. However, whilst both are litter when they are dropped (i.e. the dropper could be prosecuted under section 87 of the Environmental Protection Act 1990 for leaving litter), the standards in the

Code of Practice on Litter and Refuse do not apply to trodden-in chewing gum. Duty bodies are not required to employ special cleansing methods to remove compacted gum or gum staining over and above normal cleansing regimes.

5.4 *Refuse*. 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 land¹. (Dog fouling is a separate offence from littering.)

5.5 *Detritus*, which comprises small, broken down particles of synthetic and natural materials, arrive 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.

5.6 Large accumulations of detritus, built up over months and years, can contribute to the uncared for impression an area exudes. Detritus on metalled highways must be removed as a requirement of the s.89 duty to keep highways clean and it is also *recommended* that detritus should be removed alongside litter and refuse by duty bodies from all other hard surfaces as well (see 3.0).

5.7 *Fly-tipping*. The illegal disposal of controlled waste is commonly known as fly-tipping. There is no specific definition of fly-tipping other than in the offences set out in section 33 of the Environmental Protection Act 1990, including the deposit or disposal of controlled waste without a waste management licence, or its disposal in a manner likely to cause pollution of the environment or harm to human health.

5.8 Defra has set up the Flycapture database to gather information on the scale of fly-tipping dealt with by local authorities and the Environment Agency. Flycapture has developed a working definition of fly-tipping that sets out a wide definition ranging from a single bin-bag up to thousands of tonnes of construction and demolition waste. As well as large incidents of fly-tipping Flycapture also records any items illegally

¹ The Litter (Animal Droppings) Order 1991 (S.I. 1991/961) made under s.86 (14) Environmental Protection Act 1990.

dumped outside the standard waste collection times set by the local authority.

5.9 Local authorities deal primarily with small, localised incidents of fly-tipping while the Environment Agency focuses its efforts on dealing with larger, more serious incidents. The Environment Agency and the Local Government Association have agreed a voluntary fly-tipping protocol to clarify this division of responsibilities.

6.0 The principle underpinning this code

6.1 The quality of the local environment, that is, the appearance of an area, and the way that people perceive it, comes down to good, effective management. In order to know what resources should be deployed and when, accurate and systematic monitoring is needed. This will enable duty bodies to identify when and where the greatest litter problems are likely to occur, and to put into place procedures to ensure that these do not build up and that acceptable standards are maintained. It is good practice to make this information available to the public, for example, through publishing cleansing regimes.

6.2 Government does not expect that implementation of this Code will demand additional expenditure on the part of

a duty body, but believes that better standards can be achieved within the existing levels of expenditure by deploying suitable resources at appropriate times and combining this with education and enforcement. Defra has issued a guide to help local authorities improve standards and efficiency of street cleansing (*Achieving Improvements in Street Cleansing and Related Services, 2005*, which can be viewed at: www.defra.gov.uk/environment/localenv/pdf/street-clean.pdf).

6.3 Public opinion tends to be shaped by a minority of sites – unsightly niches and areas where litter may be trapped due to the nature of the environment itself. For most responsible bodies, good management is therefore simply about managing the minority of locations for short periods of time, as well as maintaining a consistent overall cleansing strategy.

6.4 All duty bodies are encouraged to adopt suitable monitoring systems. Local authorities report to Central Government on the cleanliness of the land for which they are responsible (BV199), and so collect data across different times of year and across different types of land use. This provides valuable data to enable managers to identify sources and causes of problems, and take the correct course

of action. The methodology is freely available from www.leq-by-pi.com. Other duty bodies have also developed efficient monitoring systems for particular environmental situations.

6.5 This Code introduces a revised set of recovery times for restoring local environmental standards for litter, refuse and detritus, if they fall below the prescribed standard. However, these should be regarded as a last resort as the levels should be maintained above an acceptable standard at all times.

7.0 Grades of cleanliness

7.1 The graded standards shown below are as defined in the original Code of Practice on Litter and Refuse issued under section 89(7) of the Environmental Protection Act 1990. These four grades also correspond to the scales used by local authorities for recording levels of street cleanliness for best value indicator BV199.

For litter and refuse:

- Grade A: **No litter or refuse**
- Grade B: **Predominately free of litter and refuse apart from some small items**
- Grade C: **Widespread distribution of litter and/or refuse with minor accumulations**

Grade D: **Heavily affected by litter and/or refuse with significant accumulations**

For detritus (to be removed on metalled highways and recommended to be removed on all hard surfaces):

- Grade A: **No detritus**
- Grade B: **Predominately free of detritus except for some light scattering**
- Grade C: **Widespread distribution of detritus with minor accumulations**
- Grade D: **Heavily affected by detritus with significant accumulations**

7.2 These standards may be applied to any site for litter and refuse, and, in the case of detritus, to metalled highways and (recommended) all hard surfaces, using the following principles. N.B. Although the nature and characteristics of land may vary the principles on which the litter, refuse and detritus are graded remain the same. The photos that follow in 7.7 demonstrate graphically how these principles appear against different backgrounds.

- Grade A means that no litter, refuse (or detritus where applicable), is present in the area.

- The presence of even one small item of litter, refuse (or small scattering of detritus where applicable) downgrades the environment to a B.
- The presence of litter and/or refuse (and/or detritus where applicable) that is significant enough to form a few minor accumulations (grade C) or significant accumulations (grade D) is regarded as unacceptable.

7.3 It is recognised that a grade A cannot be maintained at all times, and the presence of a few small items of litter and refuse, not yet accumulating, are regarded by the public as acceptable for short periods of time. It is expected that managers of land should, through monitoring and the appropriate use of resources, keep their land clear of litter and refuse so that it does not fall below a grade B and is cleansed to an A on a regular basis. Metalled highways must be free from detritus after cleansing (to a grade A).

The inclusion of the recommendation that all hard surfaces be cleansed to be free from detritus in this code seeks to ensure that thorough cleansing is carried out on a regular basis. Without this, an area still appears dirty.

7.4 It may not be practicable to remove all litter items from some softer or non-metalled surfaces, such as grass or sand, and in these cases a grade B would be acceptable.

7.5 Where vegetated and metalled surfaces abut without clear kerb edging, for example a grass verge leading onto a rural road, managers should make a judgement as to the definitive edge of the metalled surface. The extent of detritus is then comprised of the amount of encroachment onto the metalled surface from this definitive edge. It should be regarded as good practice to cut back any vegetation that encroaches upon a metalled surface, and detritus can be managed with an effective sweeping regime. Although a grade A may not be achievable in every circumstance, it is expected that an acceptable grade (grade B) be achieved on the exposed metalled surface of a road or highway. Mud and skim from flooding are separate issues.

7.6 Managers should be able to predict times or situations that lead to greater fluctuations in likely disposal patterns and prepare for them appropriately. Managers should also consider shaping their monitoring to enable them to respond quickly to potentially dangerous items such as glass or drug needles, or to sensitive areas such as playgrounds.

7.7 Pictorial examples of the grading principles in different settings

Set A: litter and refuse in both relevant highway and hard surface setting

Set B: litter and refuse in a soft surface setting



© ENCAMS

Grade A

No litter or refuse



© ENCAMS

Grade C

Widespread distribution of litter and/or refuse with minor accumulations



© ENCAMS

Grade A

No litter or refuse



© ENCAMS

Grade B

Predominately free of litter and refuse apart from some small items



© ENCAMS

Grade D

Heavily affected by litter and/or refuse with significant accumulations



© ENCAMS

Grade B

Predominately free of litter and refuse apart from some small items

Set C: principles of detritus grading in a relevant highway setting



© ENCAMS

Grade C

Widespread distribution of litter and/or refuse with minor accumulations



© ENCAMS

Grade A

No detritus



© ENCAMS

Grade C

Widespread distribution of detritus with minor accumulations



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Grade D

Heavily affected by litter and/or refuse with significant accumulations



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Grade B

Predominantly free of detritus except for some light scattering



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Grade D

Heavily affected by detritus with significant accumulations

8.0 Zones

8.1 The speed and intensity of the accumulation of litter and refuse in an area depend on a large number of factors. These can include the levels of pedestrian and vehicular traffic, natural physical features and location, the weather, the time of year, the nature of the surface of the terrain, the structural and physical items that affect the ability to clean, and the nature and condition of the surrounding areas. All of these must be accounted for when analysing the most effective cleansing strategy.

8.2 However, there are two most common features that will have an impact on the levels and frequency of attention that needs to be paid to an area to keep levels of litter and refuse to acceptable standards. These are:

- the intensity of activity in the area, from people and vehicles; and
- health and safety limitations.

8.3 As such, this revised Code has re-classified the different types of land managed by duty bodies into four main zones, based on these two variables. It is anticipated that this will help to guide duty bodies on the intensity of management required.

- *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 that do not impact upon most people's lives most of the time)
- *Areas with special circumstances* (situations where issues of health and safety and reasonableness and practicability are dominant considerations when undertaking environmental maintenance work)

8.4 Duty bodies should allocate land into one of these four zones and manage it accordingly. Table 1 below (pages 21-25) indicates the types of land within each category.

8.5 More detailed descriptions of land uses and accompanying management notes are listed in section 11 below.

8.6 If in doubt, categorise a land use into the same zone as the dominant land uses around it. For example, a park located within a housing area should be managed as a medium intensity zone.

A road would be designated as a high intensity zone whilst running through a primary or secondary retail and commercial centre, a medium intensity zone in the suburbs and a low intensity zone once in the countryside. Hotspots (for example

within 200m of entrances of car parking areas) in busy public parks, that are national tourist attractions located in rural areas, should be classified as high intensity in order to be managed effectively.

8.7 Duty bodies are expected to publish details of these zones for their land and make them available to the public on request.

8.8 All duty bodies in an area should consult together and develop an integrated approach to zoning. This should be led by the Principal Litter Authority and zoning should be completed within 1 year of commencement of the new Code's coming into effect. It is recommended that any subsequent zoning or re-zoning is done after a period of consultation. In particular, any body under the duty should consult the Principal Litter Authority when changing an existing zone or when zoning previously un-zoned areas.

8.9 In some cases these land uses may integrate with areas for which other duty bodies have responsibility, such as suburban transport centres, or land adjacent to canals. In these cases, respective zones of responsibility should be clearly defined. Partnership working is recommended as a way to manage such areas.

9.0 Timings

9.1 Duty bodies are expected to set their cleansing schedules so that they meet the duty to *keep* their relevant land clear of litter and refuse, and highways clean.

9.2 In some areas, these standards can be effectively maintained during daylight hours. However, in others longer hours of management are required, for example, in town and city centres. If the standard in high intensity areas should fall to an unacceptable level during the evening, it should be restored to grade A by 8am. Good practice would be that grade A is achieved earlier, by the time the area begins to get busy. This applies to weekends and bank holidays as well as weekdays.

9.3 If, in managing the litter and refuse, managers judge it necessary to work outside normal working hours, the duty body should administer a consistent policy to this effect. For example, in areas with a lively night-time economy, or which are obstructed by people or vehicles during the day, it may be far more efficient to carry out daytime operations to manage the levels to acceptable standards and carry out thorough cleansing regimes outside normal working hours.

9.4 As a last resort, if acceptable standards of litter and refuse are not met, response times have been set for each of the four categories by which land must be returned to an acceptable standard.

9.5 Duty bodies that allow their land to fall below acceptable standards for longer than the allowed response time may be subject to a Litter Abatement Order (section 91) or a Litter Abatement Notice (section 92) issued under the Environmental Protection Act 1990. Further details on legislation can be found in Part 3.

Response times:

High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
<p>1/2 a day</p> <p>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</p>	<p>1 day</p> <p>This means by 6pm the following evening</p>	<p>14 days</p>	<p>28 days or as soon as reasonably practicable</p>

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	1/2 a day 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	1 day This means by 6pm the following evening	14 days	28 days or as soon as reasonably practicable

Table 1 Continued

Type of land (duty applies to relevant land/highways within these categories – refer to specific guidance in section 11)

	High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
Retail, office and commercial (see section 11.1)	Primary and secondary retail, office & commercial areas	Primary and secondary retail, office & commercial areas		
Housing land (see section 11.2)		Areas of housing (except those located within primary or secondary retail, office & commercial areas which fall within high intensity areas)		
Industrial areas (see section 11.3)		Industry/warehousing /retail parks		

Type of land (continued)

	High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
Roads (see section 11.4)	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 (see section 11.5)	Publicly accessible areas in and around transport interchanges in busy public areas (most likely to be major airports, ports, harbours, bus, train, and tram passenger stations in cities and town centres, and car parks)	Publicly accessible areas in and around transport interchanges located in these areas (most likely to be suburban and important town harbours, bus, train and tram interchanges, car parks and haulage operations)	Public areas in and around transport interchanges located in these areas Also, Operational rail land between platforms and within 100m of platform ends	Operational rail land within urban areas, not covered by other zones

Type of land (continued)

	High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
Educational land (see section 11.7)		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 (see section 11.6)	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 (see section 11.8)	Waterside land in areas with high intensity of use	Waterside land in areas with medium intensity of use	All other waterside land	

Type of land (continued)				
	High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
Beaches (see section 11.9)				<p>Amenity Beaches should be generally clear of all litter and refuse between 1 May and 30 September inclusive.</p> <p>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</p>
Other areas (see section 11.10)	Other busy public areas		All other areas	

9.6 There will be circumstances, which, in the interests of responsibility and/or health and safety, require managers to respond far quicker than the maximum response time. For example, should drugs needles be found on a school playground, or any items of litter be found on an airport runway, it is expected that these objects be removed as a matter of priority, well before the maximum response time.

It is recommended that for drug-related litter, duty bodies respond within 3 hours of a report.

9.7 When there is an accumulation of material that is potentially hazardous to health (for example waste food), duty bodies should remove this at the earliest practicable opportunity.

9.8 Response times will be subject to overriding requirements, especially in relation to health and safety and traffic management, where the regulations or procedures laid down in the relevant legislation must be adhered to in the first instance.

10.0 Practical issues

10.1 The time periods given in Table 1 are maximum response times for cleaning an area that has become adversely affected by litter, refuse, and/or detritus (where applicable).

10.2 The caveat in the litter duty concerning practicability is very important. On some occasions, circumstances may render it impracticable for the body under the duty to discharge it. It is for the courts to agree whether or not it was impracticable for a person under the duty to discharge it. Examples where it may be considered impracticable to clear within duty timescales include:

- when there are severe weather conditions;
- when special events present practical difficulty in meeting the response times;
- health and safety considerations;
- to avoid damage to sensitive areas (can include natural habitats and heritage sites as well as, for example, the need to preserve forensic evidence at a crime scene);
- where advance notice is required for traffic management.

Every effort must be made to clear the land at the earliest opportunity. See section 11.0 for further information on practicability issues pertaining to each land type /highways.

10.3 The courts should also take into account action taken through other legislation, such as Street Litter Control Notices or Litter Clearing Notices.

11.0 Detailed descriptions of land uses

11.0.1 This section provides more detailed descriptions of the types of land referred to in Table 1, and, where appropriate, specific notes on the discharge of the duty and issues of practicability.

11.0.2 Annex 1 contains the full land use category descriptions used by local authorities under the BV199 sampling regime. It aims to provide those already using these land use categories with an easy reference and others with an extended description of the type of land included within the land use type.

11.1 Retail, office and commercial areas

11.1.1 This category includes all city and town centre areas and should include all of the main town and city retail, office and commercial centres, as defined in local authority Development Plans (or Local Development Frameworks), as well as busy tourist hot spots outside central areas. It should also include secondary retail, office and commercial areas (that have a frontage of over 50 metres), often located in areas of housing or smaller towns and villages. Out-of-town retail parks and industrial estates are not included in this category (see 11.3.1 below).

11.2 Housing land

11.2.1 This category includes all (relevant) land primarily used for housing, with the exception of housing located within busy town and city centres, which should be included within the Retail, Office and Commercial category.

11.3 Industrial areas

11.3.1 This category includes land within industrial and warehousing developments, out-of-town retail parks and science parks, as well as the roads running through them.

11.3.2 Some large industrial estates have honeypot sites around a number of mobile or fixed establishments selling food, or can be known fly-tipping sites that should be managed as a high intensity zone.

11.4 Roads

11.4.1 This category covers certain types of highway – motorways, trunk roads, and those defined as main roads, rural roads and ‘other highways’ according to BV199. Rights of way that are publicly maintainable will fall into the rural roads category in rural areas except where they are defined as ‘other highways’. Relevant highways falling outside these definitions should be zoned according to the surrounding land use.

11.4.2 The duty relating to relevant highways under section 89 of the Environmental Protection Act 1990 is that they should also be kept clean, not just clear of litter and refuse. In practice, the code therefore requires the removal of detritus from metalled highway surfaces, and recommends its removal from all other hard surfaces. This should be reflected in the cleansing strategy.

11.4.3 Care should always be taken to ensure that debris, detritus, and other materials are not left to become a danger to road users by accumulating to; block channels, gullies and cause flooding; encourage weed growth; or become compacted. The seasonal variations in such accumulations should be taken into consideration when formulating cleaning regimes. The difficulty of removing seasonal leaf fall is recognised in the definition of detritus, which only covers leaf fall that has substantially broken down. Extensive deposits of mud and slurry arising from farms, forestry and construction activities may present practicability issues, especially in rural areas, to which the principles in section 10.0 apply.

11.4.4 Broadly speaking, in accordance with the Environmental Protection Act 1990, the Secretary of State is responsible for ensuring that motorways and a small number of all-purpose trunk roads are kept litter-free. Certain statutory instruments have created trunked or de-trunked roads (defined in ‘A New Deal for Trunk Roads’) and are listed at www.highways.gov.uk. The responsibility

for litter clearance on the rest of the trunk road network lies with the relevant local district and borough councils.

11.4.5 Main roads and 'other highways' including, for example, dedicated cycle ways, lay-bys, and redundant highway infrastructure still accessible to the public, should fall into high or medium intensity zones depending on the surrounding land use. Rural roads and 'other highways' in rural areas fall into the low intensity zone.

11.4.6 Sections of motorways and trunk roads where vehicle speeds tend to be lower and traffic less frequent fall into the low intensity zone, namely roundabouts at motorway and trunk road intersections, run-on and run-off roads, and lay-bys on trunk roads. Other areas of motorways may be subject to the following health and safety considerations.

11.4.7 On motorways, where safety issues are paramount, it is recommended that cleansing is always carried out alongside routine maintenance to aid maintenance of standards. The issues of practicability pertaining to motorways are recognised, but examples of good

practice in regular operation include the use of moving blocks, or scavenging crews, which have proved to be effective in tackling littered areas. Some areas with slower traffic flows such as on-off roads and roundabouts are often the most littered but are actually easier to manage than areas with less refuge and higher traffic speeds such as central reservations.

11.4.8 In general, managers should identify times at which roads are least busy or obstructed and cleansing should be carried out at these times. This may mean working outside normal working hours.

11.4.9 On roads where high levels of vehicle obstruction occur most of the time, for example, those located within areas of high density housing, appropriate cleansing strategies must be used, for example, manual sweeping.

11.4.10 It should be possible for managers to set up effective cleansing strategies to manage levels of litter and refuse above acceptable standards, and carry out thorough cleansing with appropriate equipment, as required, during times with lower levels of traffic flow and/or obstruction.

11.4.11 Section 89(5) requires local authorities to place appropriate traffic signs and barriers on the highway or road to warn or regulate traffic when exercising their litter duty. Section 89(6) also requires local authorities to comply with any directions from the highway authority in respect of both the placing of such signs and barriers and of days or periods during which clearing or cleaning must not be undertaken. Additionally, section 89(6) allows local authorities to apply to the highway or roads authority asking it to exercise its powers to make temporary traffic regulation orders to restrict or prohibit the use of the road to allow cleaning and the clearance of litter and refuse to take place.

11.4.12 In relation to 11.4.11 above, the duty body will need to liaise with the highway authority to identify and agree suitable arrangements. These considerations arise particularly in relation to motorways and strategic routes that are subject to continuously heavy traffic flows. Wherever possible, agreement should be reached on the co-ordination of highway maintenance and cleansing activities, to help improve efficiency and service standards.

11.5 Transport interchanges

11.5.1 Transport interchanges are the interchange between two or more modes of transport, such as major transport centres including railway stations, bus stations, taxi ranks, ports and airports as well as any approach roads, landscaped areas, and car parking facilities within them. Non-operational land, to which the public has access, such as platforms in railway stations and approach roads and areas, would not normally be expected to be subject to special considerations relating to health and safety. Some health and safety caveats apply to operational railway land, ports and airports, addressed in section 11.5.6 and 11.5.7 below. For more detailed information, please see Defra's guidance on litter available from www.defra.gov.uk/environment/localenv.index.htm.

11.5.2 Relevant land in this land use will fall under the direct responsibility of duty bodies named under the Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991 (S.I.1991/1043). The designated statutory undertakers include train and tram operators, road transport undertakings (other than taxi or hire cars),

canals, ports, docks, harbours, piers or airports.

11.5.3 Relevant land in this category may also fall under the direct responsibility of Principal litter authorities.

11.5.4 Responsibility for transport interchanges and the land around them has been transferred between different companies and agencies a number of times since this duty came into force under the 1990 Act. It is important, when carrying out such a transfer, that responsibility for all areas of land, including adjacent car parks and landscaped areas, are noted in the documents of transfer to avoid inconsistencies later.

11.5.5 The predominant land use around public transport facilities will determine the cleanliness standards and response times expected of the duty body, in addition to the general levels of usage. For instance, a bus station in a central business district, or a major international airport, would form a high intensity area. A small railway station in a rural area would fall into a low intensity zone.

11.5.6 Issues relating specifically to railway land:

- Areas of railway land to which the public are permitted to have access, which include station forecourts, platforms and public land adjacent to the station, should not normally be subject to significant health and safety caveats so as to preclude management of litter and refuse to acceptable levels.
- Operational land up to 100m beyond the platform ends at railway stations and between platforms is subject to a 14-day response time to allow for possible delays due to health and safety considerations. It is felt that this time is sufficient to clear such land, should the levels of litter and refuse fall below acceptable levels between regular cleansing cycles.
- It is recognised that operational land within urban areas may be subject to greater health and safety considerations, but duty bodies are expected to combine management of litter and refuse with routine track maintenance work so as to avoid significant accumulations of litter and refuse. Any significant accumulations should be removed at the earliest opportunity.

- In areas where the origin of litter or refuse is external to railway activities, the duty body may consider it appropriate to make clearance arrangements on a partnership basis involving the railway undertaking, local authorities and amenity groups.
- Access to railway land is subject to strict controls, and local authorities must not under any circumstances enter nor purport to authorise entry by any person. Only the railway undertaker concerned is in a position to authorise entry by persons in possession of appropriate railway safety certification meeting the requirements of undertaker's Railway (Safety Case) Regulations 2000 (S.I. 2000/2688).

11.5.7 Issues relating specifically to ports and airports:

- Access to ports and airports is strictly controlled because of the risks to safety and security; in particular, access to the airside at commercial airports and access into restricted areas of ports is subject to stringent security checks. The port authority or airport authority responsible for the site must therefore always be contacted with regard to accessing such land.

11.6 Public open spaces

11.6.1 This land use type includes a wide range of open spaces to which the public has access. Sites include parks, picnic sites, and municipal cemeteries.

11.6.2 Public open spaces experience varying levels of patronage, often determined by their location or national/regional reputation. As an example, public open spaces located in intensely used zones should be managed closely as they will be subject to the same fluctuations in pedestrian, and in some cases, vehicular, flows, as the surrounding area. The same rule should be used for the other zones. Some hotspots in the less intensely used open spaces, such as car parks or information points, should be zoned as higher intensity zones in order to manage the likely fluctuations in littering appropriately.

11.6.3 Duty bodies will need to have regard to relevant guidance relating to protected areas such as Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty and National Parks.

11.7 Education land

11.7.1 This duty applies to land in the open air and under the direct control of the governing body of designated education institutions. Broadly, universities, publicly funded colleges of higher or further education and schools are designated for the purpose of this duty, but for full details see section 98(2) Environmental Protection Act 1990 and the Litter (Designated Educational Institutions) Order 1991 (S.I.1991/561).

11.7.2 In developing their management strategies, managers should anticipate the changing intensity of use throughout the year, together with the likely impacts of the different users (students studying during term-time, visiting students, other visitors).

11.7.3 Duty bodies should also take into consideration the impact of their land on the land around it, particularly at key times of the day or year, and seek to work with neighbouring duty bodies to address some of these impacts through awareness-raising or more practical activities. Litter trails from schools to local shops and the impact of residential university students on litter and waste collection in specific areas can

significantly increase the management requirements for other duty bodies as well as on education land itself.

11.8 Waterside land

11.8.1 This land use includes canal waterways, marinas, inland navigation towpaths and towpaths to which the public has access in urban areas.

11.8.2 Under the Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991 (S.I.1991/1043), land adjacent to an unpaved towpath or adjacent to a paved towpath where the paving extends for a length of less than 1 kilometre is not to be treated as relevant land of any designated statutory undertaker.

11.8.3 The growing number of waterside areas located within high intensity of use areas, such as leisure areas comprising bar and restaurant developments, visitor attractions or honey pot sites, are upgraded to a high intensity zone. Likewise, waterside areas experiencing medium intensity of use or located within a medium intensity zone, would be zoned as a medium intensity zone. This will enable them to be managed appropriately

to address the levels of use and high fluctuations of litter and refuse likely to relate, in particular, to the weather and the time of day.

11.8.4 In areas where the origin of litter or refuse is external to the activities of the canal or inland navigation undertaking, the duty body may consider it appropriate to make clearance arrangements on a partnership basis involving the undertaking, local authorities and amenity groups.

11.8.5 Duty bodies responsible for canals, marinas and towpaths should aim to cleanse hard surfaced areas to a grade A where practicable. A grade B is sufficient as a standard for areas subject to issues of practicability such as access, physical restrictions due to design or nature of the environment, or areas that are ecologically sensitive where a minimum, if any intervention is required.

11.8.6 Secluded areas such as underneath canal bridges or near waterside buildings are particularly likely to attract individuals taking drugs, and therefore be susceptible to higher levels of drugs litter.

It is recommended that canals and related areas should be subject to regular and systematic management and monitoring.

11.9 Beaches

11.9.1 Duty bodies responsible for beaches include Principal litter authorities and Crown Authorities.

11.9.2 This land use includes Amenity Beaches (including inland beaches where substantial numbers of bathers or beach users may congregate). As a minimum standard, Amenity Beaches should generally be kept clear of all types of litter and refuse between 1st May and 30th September inclusive. It is expected that during this time of the year, beaches be subject to a frequent monitoring routine and be cleansed to as practicable a standard as possible. The Code recognises that a grade A is not always achievable, due to the terrain and conditions in a beach environment. A grade B would be a suitable cleanliness standard under these circumstances.

11.9.3 Due to changing holiday and climatic patterns, beaches are increasingly being used outside of the traditional bathing season of May – September.

Although the duty does not extend beyond the bathing season, it is recommended as good practice that duty bodies are aware of the different nature of beaches within their area, that they carry out a regular monitoring programme of those beaches and develop an appropriate cleansing regime.

11.9.4 By virtue of the Litter (Relevant Land of Principal litter authorities and Relevant Crown Land) Order 1991 (S.I.1991/476), land below the place to which the tide flows at mean high water springs is not to be treated as relevant land of Principal litter authorities or as relevant Crown land. Again, it is recommended as good practice that duty bodies are aware of the impact of litter in the inter-tidal area, and where appropriate, carry out cleansing.

11.9.5 Local authorities should identify those beaches for which they have responsibility, which might reasonably be described as “amenity beaches”. Any assessment should take into account the level of use of the beach for recreational purposes.

11.9.6 The duty applies to items or materials originating from discharges directly to the marine environment as well as discarded items from beach users. As a guide, only litter comprising manufactured or processed items of materials that have been discarded, disposed of or abandoned, by intent or accident, should be removed. Litter should include processed food items but it does not include seaweed or twigs, which contribute to maintaining the local ecosystem.

11.9.7 There may be issues of practicability relating to litter removal from beaches and particular care will be needed in respect of sensitive habitats.

11.10 Other areas

11.10.1 This category represents all other areas of relevant land under the duties under the 1990 Act not classified within any other type of land in section 11 above. These areas should be managed according to the intensity of use of the surrounding land and zoned accordingly.



Part 2: Advisory standards for graffiti and fly-posting

12.0 Introduction

12.1 This section is intended to set out advisory standards for graffiti and fly-posting, to detail what grades A – D look like for each standard. Duty bodies are not required to effect the advisory standards listed below. However, it is recommended that all duty bodies seek to manage these problems in the course of discharging their section 89 duties, and to work with other land managers in order to achieve standards of cleanliness (as perceived by the public) across all land types regardless of ownership.

12.2 Incidents of these types of environmental crime may not be as widespread as those of litter, refuse or detritus, but their presence on the appearance of the local environment, and can lead to further degradation of the area and an increase in the fear of crime. Duty bodies can clear an area of litter, refuse and detritus, but from the public's point of view, the local environment feels far from clean.

12.3 Local authorities should always remove graffiti and fly-posting from public property. They should also work with private property owners to seek the removal of graffiti and fly-posting to the standards set out in this section. Powers are available to local authorities to require the removal of fly-posters and graffiti in certain circumstances. These are detailed in Part 3 of this document.

12.4 Government requires local authorities to submit data on graffiti and fly-posting through Best Value Performance Indicator BV199. Therefore, this part details the system that has already been researched and developed for grading these standards and their impact on the local environment from the public perspective, and makes it available to all duty bodies. Further information and pictorial illustrations of the principles behind the grading are available from www.leq-bvpi.com.

12.5 Acceptable standards for graffiti and fly-posting are grade B and above. Wherever possible, they should be removed completely so that there is no trace, to a grade A standard.

12.6 In a survey carried out by ENCAMS that questioned local authorities about local environmental quality issues², only 4% of authorities responded that they had received no public complaints about graffiti in the last 12 months. 89% felt that they had a problem (20% major and 69% minor) with graffiti. Fly-posting had prompted fewer public complaints, with 29% of local authorities stating that they had received no public complaints in the last 12 months. The average number of complaints received was 22, but ranged from 0–300. 83% of local authorities stated that they had a problem (14% major and 69% minor) with fly-posting. Other duty bodies interviewed as part of the wider consultation exercise also named graffiti and fly-posting as local environmental issues that they had to manage to different levels.

12.7 Good practice is available for all duty bodies in creating cleaner, safer, greener communities from www.cleanersafergreener.gov.uk.

13.0 Standards for graffiti and fly-posting

13.1 **Grffiti (BV199b)**. Any informal or illegal marks, drawings or paintings that have been deliberately made by a person or persons on any physical element comprising the outdoor environment, with a view to communicating some message or symbol etc. to others.

- Grade A **The local environment is completely free of graffiti.**
- Grade B **Some graffiti is present, but it is minor in extent, and many people passing through the local environment would not notice it.**
- Grade C **Grffiti is present to the extent that it would be clearly visible to people passing through the local environment, and visible at a distance from at least one end of the 50m transect³.**

² ENCAMS (2004) LEQ: A Local Authority Perspective www.encams.org.

³ Throughout, 'transects' are referred to. These are used to describe the survey site, whether it is on a highway or on other kinds of sites. For more information on transect definition see www.leq-bvpi.com.

Grade D Graffiti is extensive over a large part of a 50m transect and is likely to be clearly visible and obtrusive to people passing through the local environment, and visible from any point on the transect.

13.2 Duty bodies should aim to prioritise the removal of offensive or racist graffiti. Research shows that the majority of local authorities aim to remove them within 24 hours.⁴

13.3 **Fly-posting (BV199c)**. Any printed material and associated remains informally or illegally fixed to any structure. It excludes formally managed and approved advertising hoardings and valid, legally placed signs and notices. It includes any size of material from small stickers up to large posters – often advertising popular music recordings, concerts and other events.

NB: This *excludes* business cards and handbills placed under vehicle windscreen wipers and door handles⁵; illegal displays on movable objects such as advertising

'A boards'; and billboards on movable bases on farmland, 'barrage balloons' etc.

Grade A The local environment is completely free from fly-posting.

Grade B Some fly-posting is present, but it is minor in nature and it is likely that many people would not notice its presence.

Grade C Fly-posting is present in the local environment to the extent that it is likely to be clearly visible to people using the area, and visible at a distance from at least one end of a 50m transect.

Grade D Fly-posting is extensive throughout much of the local environment and is clearly visible and obtrusive to people passing through the street scene, and visible from any point on a 50m transect.

⁴ ENCAMS (2004) LEQ: A Local Planning Authority Perspective www.encams.org. Research showed that 65% of local authorities surveyed removed sexist or racist graffiti within 24 hours, and the full range stated was from 4 hours to 10 days.

⁵ These items do not fall under the Town and Country Planning Act 1990 restrictions, but where they have been discarded they will form a component of litter.



Part 3: Legislation to support the code of practice

14.0 Introduction

14.1 The Code of Practice on Litter and Refuse is issued by the Secretary of State under section 89 of the Environmental Protection Act 1990. This section of the Act imposes a duty on certain bodies to keep relevant land and highways for which they are responsible, clear and clean of litter and refuse so far as is practicable. However, the Environmental Protection Act 1990 (as amended by the Clean Neighbourhoods and Environment Act 2005) is only one part of a raft of legislation available to duty bodies to help maintain land within acceptable levels of cleanliness.

14.2 **Section A** outlines the legislation available to individuals and authorities who consider that duty bodies are not meeting their duties under section 89.

Section B details the main powers available to land managers to prevent littering.

Section C outlines the legislation available to help to tackle litter and refuse on private land.

Section D outlines the legislation available to manage dog fouling.

Section E outlines the legislation available to manage graffiti and fly-posting.

14.3 This section must not be seen to be comprehensive, and it does not constitute legal advice. Full legislation is available through www.opsi.gov.uk, Government provides further detailed guidance, available from www.defra.gov.uk/environment/localenv/index.htm, and a guide to the legislation available to local authorities to better manage the public space can be found at www.idea.gov.uk/knowledge, including details of legislation specific to participating London local authorities. If you wish to take advice or pursue a case, you must seek independent legal advice.

A: If the duty is not met

Making a complaint about litter and refuse – Litter Abatement Orders (Environmental Protection Act 1990 section 91).

This section provides for individuals and legal persons (but not Principal litter authorities) to take action, via the magistrates' courts, against those not complying with the duty to keep land clear of litter or refuse, or highways clean.

If the magistrates' court concludes that the complaint is well founded, it may issue a Litter Abatement Order requiring the person complained against to clear or clean the land. Local authorities and other duty bodies should inform the public about procedures for making a formal complaint and the right to seek redress in the courts if the litter duty is not met.

Enforcing the requirement for duty bodies to keep land clear of litter and refuse – Litter Abatement Notices (Environmental Protection Act 1990, section 92).

This section enables Principal litter authorities to take action where a duty body is failing to keep its relevant land clear of litter and refuse. The power to issue a Litter Abatement Notice is available to Principal litter authorities, other than county councils or a joint board, and may be used where any relevant Crown land, or 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.
- A *prohibition* on permitting the land to become defaced by litter or refuse.

Penalties for failing to comply with a Litter Abatement Order or Litter Abatement Notice.

Failure to comply with a notice or order is a criminal offence, punishable by a maximum fine at level 4 (currently £2,500), together with a further fine of (currently) £125 a day for each day that the offence continues. The Code of Practice on Litter and Refuse is admissible as evidence in proceedings on a complaint, or for breach of a notice or order.

B: Powers to prevent littering

Offence of leaving litter, prosecution and fixed penalties (Environmental Protection Act 1990, sections 87 & 88).

It is an offence to throw down, drop or otherwise deposit, and then to leave, litter under section 87 of the 1990 Act. The offence, as extended by section 18 of the Clean Neighbourhoods and Environment Act 2005, applies to all places that are open to the air, including private land and land covered by water.

A person found guilty of the litter offence may be fined up to level 4 on the standard scale (currently £2,500). Fixed penalty notices for litter may be issued by an authorised officer of a litter authority (including Parish Councils), by National Park Authorities, Police Community Safety Officers and accredited persons.

Dealing with street litter outside premises (Environmental Protection Act 1990, sections 93 & 94).

Sections 93 and 94 give local authorities the power to tackle street litter generated further to activities on adjacent premises . The type of commercial and retail premise in respect of which a notice may be issued are specified in the Street Litter Control Notices Order 1991 (SI 1991/1324). There is no restriction on the type of litter for which this may be used, but it is intended primarily to help deal with food and drink packaging and other litter caused by eating 'on-the-go' as well as litter from cash points and lottery tickets dropped outside shops. The legislation enables local authorities to serve Street Litter Control Notices requiring businesses to clear up the litter and implement measures to prevent the land from

becoming defaced again. Amendments made to the 1990 Act by the Clean Neighbourhoods and Environment Act 2005 have made it immediately an offence to fail to comply with the requirements of a Street Litter Control Notice, and fixed penalties may be issued as an alternative to prosecution.

Local authorities should work in partnership with others to resolve the problem of street litter and seek to remedy it, where possible, through joint working and good management practice. Such an approach is fostered by Defra's Voluntary Code of Practice for 'Reducing litter caused by Food on the Go', which sets out recommendations to help businesses, local authorities, and other public and private sector bodies to work together.

Controlling the distribution of free literature (Environmental Protection Act 1990, section 94B and Schedule 3A).

The distribution of free literature can blight public spaces if leaflets and other printed materials are subsequently dropped as litter.

Section 94B and Schedule 3A of the Environmental Protection Act 1990, (inserted by the Clean Neighbourhoods and Environment Act 2005), give Principal litter authorities powers to control such distributions. Authorities can 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 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.

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

C: Powers for managing litter on other's land

Litter Clearing Notices (Environmental Protection Act 1990, sections 92A-92C).

Principal litter authorities have the power to issue Litter Clearing Notices where land in their area is defaced by litter or refuse *and* this is detrimental to the amenity of the area. This power was introduced into the 1990 Act by the Clean Neighbourhoods and Environment Act 2005, and replaces the previous system of Litter Control Areas.

Litter Clearing Notices can be used to tackle litter on most types of land, other than those areas for which there is already a responsibility to clear litter and refuse under section 89. It therefore offers a tool for dealing with litter on private land that can often be blown or otherwise carried into neighbouring areas. The main features of the system are:

- A notice can be served without prior designation of a litter control area, and it is an offence not to comply with a Litter Clearing Notice;

- Local authorities are able to specify the standard to which land must be cleared;
- If land is not cleared, or is not cleared satisfactorily, the local authority can enter the land, clear it itself, and recover the costs of doing so.

Wherever possible, Principal litter authorities should work in partnership with land owners and occupiers to resolve problems caused by heavily littered land. In issuing a notice, authorities should consider the role that they can play to address the causes of the litter problem, particularly in specifying steps to be taken to prevent future defacement.

Section 59 Environmental Protection Act 1990.

Provides powers for waste regulation authorities and waste collection authorities to serve a notice on the occupier or owner of land to require the removal of controlled waste unlawfully and knowingly deposited. Where a person fails to meet these requirements the local authority or the Environment Agency may clear the waste and seek to recover the costs.

Part III (Statutory Nuisance) Environmental Protection Act 1990.

District councils can serve an abatement notice if an accumulation or deposit is considered to be prejudicial to health or a nuisance. Reasonable costs can be recovered by the authority in abating or preventing the recurrence of a statutory nuisance for which a notice has been served. Inert material, however, would not be categorised as a statutory nuisance.

Section 215 Town and Country Planning Act 1990.

Allows a local planning authority to serve a notice on the owners and occupiers of land, requiring the site to be tidied up if the condition of any land is in such a state as to adversely affect the amenity of the neighbourhood. Non-compliance is punishable (s.216) by a fine not exceeding level 3 (currently £1,000) on the standard scale.

Section 22 (3) Control of Pollution Act 1974.

Provides a power to district councils, London borough councils and the Common Council of the City of London to arrange, with the agreement of the person owning or occupying the land, for cleaning of land in the open air (other than a highway) to which the public have access. Charges will be paid by the owner or occupier.

Section 78 Public Health Act 1936.

Provides powers for district councils, London borough councils, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple to sweep and cleanse any court, yard or passage which is used in common by the occupants of two or more buildings (but is not a highway repairable by the inhabitants at large) and which is not regularly swept and kept clean to the satisfaction of the authority. The council may recover reasonable expenses from the occupiers of the buildings.

Section 34 Public Health Act 1961.

Provides a power for urban district councils, borough councils, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple and the Council of the Isles of Scilly to remove from any land in the open air any rubbish that is seriously detrimental to the amenity of the neighbourhood. Rubbish is defined as including rubble, waste, paper, crockery and metal.

Section 6 Refuse Disposal (Amenity) Act 1978.

Gives district councils, London borough councils and the Common Council of the City of London the powers to remove from land open to the air or on a highway any thing (other than a motor vehicle) that has been abandoned without lawful authority. If the land is occupied, the council must give notice of their intention to remove. Costs can be recovered from the person leaving the refuse or a person knowingly permitting it.

Section 4 Prevention of Damage by Pests Act 1949.

A local authority can serve a notice requiring an owner to remove, at his own expense, accumulated waste for the purpose of keeping land free from rats and mice. Costs can be recovered should the council have to remove it.

D: Powers to tackle dog fouling

Dog Control Orders (Clean Neighbourhoods and Environment Act 2005 sections 55-62, and regulations made under them) The Clean Neighbourhoods and Environment Act has repealed the Dogs (Fouling of Land) Act 1996 and, subject to savings in respect of that Act, dog fouling is now controlled by way of Dog Control Orders. These can be made in respect of land which is open to the air (including covered land which is open to the air on at least one side) and to which the public has access with or without payment. Dog Control Orders can be made and enforced by both primary and secondary authorities and cover a range of dog control issues. They can be applied to:

- restrict the number of dogs per person;
- require the person in charge of a dog to clear up dog faeces;
- require dogs to be on a lead;
- require that dogs are put, and kept, on a lead if directed to do so by an authorised officer; or
- or place a ban on dogs over an area.

The penalty for committing an offence under a Dog Control Order is a maximum fine of level 3 on the standard scale (currently £1,000). Under section 59 of the 2005 Act, an authorised officer may offer to issue a Fixed Penalty Notice as an alternative to prosecution; under section 60 a level of £75, although primary or secondary authorities are able to set another amount within a range prescribed in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006.

Designations made under the Dogs (Fouling of Land) Act 1996 prior to April 2006 will remain in force until such a time as a Dog Control Order is made for the same land in respect of the same offence.

This means that prosecutions can continue to be brought against those who infringe dog laws on land designated under the Dogs (Fouling of Land) Act 1996. Fixed Penalty Notices can continue to be issued for dog fouling offences on land designated under the 1996 Act but the fixed penalties will remain at £50.

E: Powers to tackle graffiti and fly-posting

Fixed penalty notices for graffiti and fly-posting (Anti-social Behaviour Act 2003 sections 43-47)

Authorised officers of local authorities (including Parish Councils), Police Community Support Officers and 'accredited persons' may issue fixed penalty notices to those who physically commit 'minor' acts of graffiti and fly-posting as an alternative to prosecution. The specific offences for which such fixed penalty notices may be issued are given in section 44 of the 2003 Act.

Defacement removal notices (Anti-social Behaviour Act 2003 sections 48-52)

These sections enable a local authority to serve a 'defacement removal notice' on the owners of street furniture, statutory undertakers and educational institutions whose property is defaced with graffiti or fly-posting that is either detrimental to the amenity of the area or offensive.

If the defacement is not removed within a specified time (minimum 28 days), the local authority can intervene and clean it up themselves, with due reference to guidance issued by the Secretary of State. An appeals process is available.

Graffiti (Criminal Damage Act 1971)

Creating Graffiti is an act of criminal damage under section 1 of the Criminal Damage Act 1971. The amount of the penalty for committing such an offence will depend on the value of damage caused. (It may also be an offence under section 54, paragraph 10 of the Metropolitan Police Act 1839, section 20(1) of the London County Council (General Powers) Act 1954, and section 131(2) or 132(1) of the Highways Act 1980.)

**Sale of aerosol paint to children
(Anti-social Behaviour Act 2003,
sections 54 and 54A)**

Section 54 makes it an offence to sell aerosol spray paints to persons aged under 16, with the objective of reducing the incidence of criminal damage caused by acts of graffiti. Retailers selling spray paints to under 16s commit an offence, which carries a level 4 fine (currently £2,500). Retailers are required to check the age of buyers if there is any doubt that they are least 16 years old.

Section 54A places a specific duty on local authority trading standards to investigate the extent of spray paint graffiti problems in their areas once a year and to take appropriate enforcement action where necessary to tackle underage sales.

**Section 215 Town and Country
Planning Act 1990**

The local planning authority has a power to serve a notice specifying steps for remedying condition of land that is adversely affecting the amenity of the area.

The scope of works that can be required in section 215 notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs, and repainting.

**Unlawful display of advertisements
(Town and Country Planning Act
1990, sections 220 and 224)**

Section 220 gives the Secretary of State powers to make regulations restricting or regulating the display of advertisements so far as it appears to the Secretary to State to be expedient in the interests of amenity or public safety. There is a power to make regulations enabling the Local Planning Authority to require the removal of advertisements and the discontinuance of the use of the site for display of advertisements. It is an offence under section 224 to display an advertisement in contravention of the regulations under section 220 of that Act. A person found guilty of this offence may be liable to a fine not exceeding level 4 (currently £2,500) on the standard scale.

Removal of placards and posters (Town and Country Planning Act 1990 section 225)

This section enables a local planning authority to remove or obliterate any poster or placard the display of which is, in the authority's opinion, in contravention of the section 220 Regulations. Notice must first be given where the placard or poster identifies the person who displayed it, or caused it to be displayed.

The Clean Neighbourhoods and Environment Act 2005 amended section 225, introducing powers for local planning authorities to recover the costs incurred when removing fly-posters. The 2005 Act also amended the statutory defence in section 224 so that the local authority no longer has to prove that a person consented to the display of an advertisement in contravention of the regulations. The only defence now is that the advertisement was displayed without the person's knowledge.

Good practice

For general information and good practice relating to cleansing, see: www.cleanersaferegreener.gov.uk

Defra's Voluntary Code of Practice for Reducing Litter Caused by 'Food on the Go' can be viewed at: www.defra.gov.uk/environment/localenv/litter/pdf/fastfoodcop.pdf

Guidance on the use of section 215 of the Town and Country Planning Act 1990 is available at: www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_034817.pdf

A good practice guide for tackling fly-posting is published by the Office of the Deputy Prime Minister (2000), and is available at: www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_606218.hcsp

ENCAMS produces good practice for land managers, see www.encams.org

The Chartered Institution of Wastes Management produces an Environmental Cleansing Handbook, for publication details please visit www.ciwm.org.uk

Information on the Flycapture database is available at: www.defra.gov.uk/environment/localenv/flytipping/

The Fly-Tipping Protocol may be viewed at: www.environment-agency.gov.uk/aboutus and follow the links.



Annex A: Comparisons between code of practice on litter and refuse land use categories and BV199 land use definitions

COPL&R Land use	BV199 Land use (Correct at the time of going to print. For the latest information visit www.leq-bvpi.com)
11.1 Retail, office and commercial	<p>Primary retail, office and commercial areas</p> <p>This land-use includes the main town and city retail, office and commercial centres, as defined in local authorities' Area Wide Development Plans. Urban tourist hot spots which are wholly or partially separated from a main town or city retail and commercial centre should also be considered within this category.</p> <p>Primary Retail and Commercial Areas contain a choice of outlets in a range of different retail and commercial sectors (such as fashion clothing, financial services, restaurants, bars and entertainments), and will include national and international brand names. Normally, there is also a range of public facilities, including libraries, museums, law courts, and places of worship. Rear access roads, service roads, car parks and the first 50m of side streets off the primary retail and commercial areas should also be included in this land-use.</p> <p>Secondary retail, office and commercial areas</p> <p>This Land-use covers secondary retail, office and commercial areas located outside main city and town office retail and commercial centres (but excludes retail park developments, which are included with industry, warehousing and science parks). Secondary Retail, Office and Commercial Areas must contain a <i>minimum</i> continuous retail/commercial frontage of 50 metres.</p> <p>Secondary Retail, Office and Commercial Areas usually contain a range of facilities that mainly meet the needs of local residents. Most premises contain individual private businesses, sometimes branches of regional chains (such as bakers) and, occasionally, national brand names. Sometimes, Primary and Secondary Retail, Office and Commercial Areas dovetail into each other, for example a 'High Street' may be Primary at the Town Centre end, but tail off into Secondary towards the far end. In such cases, assign the land-use class that predominates at that point. Rear access roads, service roads, car parks and the first 50m of side streets off secondary retail and commercial areas should also be included in this land-use.</p>

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11.2
Housing
land

Higher density housing

This Land-use Class includes housing of varying types, for example:

- terraced housing in the inner areas of towns and cities;
- terraced housing in industrial and post-industrial villages (such as mining and quarrying settlements);
- alleyways behind and between housing areas where there is direct access to properties;
- flats and maisonettes with only limited off-street parking on public housing estates;
- semi-detached and short-terraced dwellings with limited or no purpose-made off-street vehicle parking.

Housing areas should be classed as 'higher density' if the proportion of dwellings with purpose-made off-street parking facilities is less than 50%. 'Off-street parking' may include specially formed parking bays and garage courts located adjacent to the highway, or areas of hard standing on grassed areas comprising engineered cellular concrete blocks designed to provide vehicle parking areas. Higher density housing areas can also include occasional small retail premises, offices, manufacturing, and warehousing sites. .

Lower density social housing areas

This Land-use Class includes all types of lower density social housing estates where purpose-made off-road garaging/parking is provided for 50% or more of the dwellings. Such provision can include front gardens that have been converted to provide hard standings or extensive garage courts serving high-rise blocks of flats that are set amongst landscaped areas.

Where a front garden has been converted for parking, it should only be considered as constituting 'off-street parking' if the kerb has been deliberately dropped. This class also includes estates which were originally constructed to provide council or other social housing where tenants have taken up 'right to buy' options. Classic council housing estates differ from private housing areas in layout – there tend to be more open spaces and grass verges in council housing areas.

<p>COPL&R Land use</p>	<p>BV199 Land use (Correct at the time of going to print. For the latest information visit www.leq-bvpi.com)</p>
<p>11.2 Housing land (continued)</p>	<p>For this reason, even where a former council estate has been sold off under 'right to buy' legislation, it should still be classified as Lower Density Social Housing. The only exception to this would be if there had been extensive remodelling of the estate to include new building on former open spaces.</p> <p>Lower density private housing areas</p> <p>This Class comprises low-density housing developments, which were originally built for private purchase, located in urban areas, rural villages, and commuter villages, and which have off-road garaging / parking provision for 50% or more of dwellings. Rear access alleyways, car parks and garage courts in low-density private housing areas should also be included in this land-use.</p>
<p>11.3 Industrial areas</p>	<p>Industry, warehousing, retail sheds and science parks</p> <p>This Class includes industrial and warehousing developments; out-of-town retail parks (including food and non-food developments); and science parks (containing offices, laboratories and manufacturing processes), which contain land that is owned or managed by the local authority, and which is freely accessible to the public. Public roads running through hospital and university campuses should also be included in this category.</p>
<p>11.4 Roads</p>	<p>Main roads (BV199)</p> <p>This Class comprises 'A' roads (marked in red and green on 1:50,000 Ordnance Survey Maps) in the following situations:</p> <ul style="list-style-type: none"> • Throughout rural areas (except where main roads run through larger settlements containing Primary and Secondary Retail and Commercial Areas and Higher Density Housing Areas); • In urban areas, except where main roads run through Primary and Secondary Retail and Commercial Areas, or through Higher Density Housing Areas where no selective demolition has taken place (see below);

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11.4
Roads
(continued)

- In High Density Housing Areas in urban areas where selective demolition has taken place in order to create a wider, often landscaped, main road corridor;
- In London and parts of the West Midlands, this Class also includes Red Routes that are located outside Primary and Secondary Retail and Commercial Areas.

Rural roads (BV199)

This Class comprises all adopted highways that are located outside built up areas and which are not otherwise included in the Main Roads or Other Highways Land-use Classes.

Other highways (BV199)

This Land-use Class includes:

- Formal and informal lay-bys on main and rural roads; pedestrian overbridges and underpasses;
- Redway (dual purpose cycleway/footpath – as in Milton Keynes);
- narrow roads within housing areas – often referred to by local names, such as ‘ginnels’, ‘snickets’, ‘snickleways’, ‘six-feet’ and ‘ten-feet,’ except where these provide rear access to terraced housing (see Higher Density Housing above). Normally, this type of pathway is adopted and is usually closely bounded by walls and/or other boundary structures.
- The first 50 metres of BOATS, RUPPS and bridleways leading from metalled public highways;
- Redundant highway infrastructure still accessible to the public, including stub access roads to future development sites;

Note: ‘Other Highways’ include dedicated cycleways which are separated by distance or by a physical barrier from highways that are used by motor vehicles and from other adjacent land uses. For example, where a cycleway crosses a public park, the cycleway should be included as part of the public park.

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11.6
Public open
spaces

This Land Use Class includes a wide range of open spaces that are freely accessible to the public and which are maintained by a local authority. Sites include parks, picnic sites, canals, lakes, riversides; municipal cemeteries (but not churchyards) and cycleways (excluding cycleways classified as 'Other Highways' – see above).

Note: many canal towpaths are excluded for the purposes of BV199 because they do not comprise Relevant Land for a principal litter authority.

Where the ownership of Recreational Land has been transferred from a Borough or District Council to a Town or Parish Council, this is no longer relevant land for the purposes of BV199, and should be excluded. However, where Town or Parish Councils only manage land on behalf of the local authority (which retains ownership), then such land remains relevant land and should be included in the BV199 return.