



Scottish Executive Environment Group
Code of Practice on Litter and Refuse
issued under section 89 of the
Environmental Protection Act 1990

October 2006
SE/2006/164



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Environmental Protection Act

1990:

Code of Practice on Litter and Refuse (Scotland) 2006

**Code of Practice on Litter and Refuse issued under
section 89 of the Environmental Protection Act 1990**

**Laid before the Scottish Parliament by the Scottish Ministers in pursuance of section 89(7)
of the Environmental Protection Act 1990.**

Environmental Protection Act 1990:

Code of Practice on Litter and Refuse (Scotland) 2006

Introduction

The Environmental Protection Act 1990 (the Act) imposes a duty on local authorities and certain other landowners and occupiers (the duty bodies) to keep specified land clear of litter and refuse so far as is practicable. The Act also places a duty on local authorities or Scottish Ministers to keep public roads clean so far as is practicable. This publication provides practical guidance on the discharge of these duties.

The first part of this publication is a Code of Practice issued under section 89(7) of the Act. Where land is defaced by litter or refuse and action is taken in court under section 91 or 92 of the Act, this Code of Practice is admissible in evidence in the proceedings.

The Code of Practice defines standards of cleanliness which are achievable in different locations and under differing circumstances. It is concerned with how clean land is, rather than how often it is swept. The Code of Practice does not, therefore, suggest cleaning frequencies. Rather, it sets out how quickly different types of land should be returned to a set cleanliness standard.

The second part of this publication provides guidance on ensuring litter management is approached in an holistic manner, tackling service provision, awareness raising and campaigning, and enforcement. Advice is given in a menu of options for tackling litter problems in a variety of areas, from town centres to beaches. An holistic approach to litter management has a range of benefits for service providers, the public, the business community and enforcement agencies:

- each knows what to expect of service providers and what is expected of them in turn,
- each duty body knows the minimum level of service required and their own individual obligations

Parts I and II of this publication are supported by Part III which is a web-based good practice guide. This guide can be viewed at www.littercode.org.

The production of this Code of Practice follows a review of the litter and flytipping provisions of the Act by the consultants, Environmental Resources Management (ERM), commissioned by the Scottish Executive. An Advisory Group consisting of representatives from COSLA, the Scottish Environment Protection Agency (SEPA), Keep Scotland Beautiful and the Scottish Executive oversaw the review. The review found that there are no fundamental difficulties with litter legislation, but that straightforward, clear guidance should be provided.

Following this review, Keep Scotland Beautiful was commissioned to co-ordinate the updating of the Code of Practice. This process involved a year-long consultation exercise with all Scottish local authorities and other duty bodies, as well as enforcement bodies, other interested parties and bodies that could, potentially, have duties under the code.

In the main, the standards of cleanliness, zoning and response times remain unchanged, although the information relating to non-local authority duty bodies has been clarified. Part II now includes information relating to education, campaigning, and, specifically, enforcement options. Part III is now a supporting web-based good practice guide.

This Code of Practice is issued in replacement of the Code of Practice 1999, which is hereby withdrawn in respect of Scotland.

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PART I

Introduction

The objective of the Code of Practice is to provide practical guidance on the discharge of the duties under section 89 of the Environmental Protection Act 1990 by establishing reasonable and generally acceptable standards of cleanliness which those under the duty should be capable of meeting.

The Code of Practice is based on the following two principles:

- Areas which are habitually more heavily trafficked should have accumulations of litter cleared away more quickly than less heavily trafficked areas; and
- Larger accumulations of litter and refuse should be cleared more quickly than smaller accumulations.

The Code of Practice provides a cleanliness standard based on land use. It sets out grades of cleanliness and divides land into zones according to usage and volume of traffic. If the cleanliness of an area falls, the Code of Practice sets out a response time that is the target for the duty body to restore the land to a particular grade of cleanliness.

The Code of Practice is concerned with output rather than input standards – how clean land is, rather than how often it is swept. It does not suggest cleaning frequencies; it simply defines certain standards that are achievable in different circumstances. This may mean that an area which generally escapes littering will seldom need to be swept, whereas a litter blackspot will need more frequent attention. The Code of Practice offers considerable scope for local authorities and other duty bodies to target resources to areas most in need of them, rather than sweeping a street because of the dictates of an arbitrary rota. Expressed in its simplest terms, “If it isn’t dirty, don’t clean it.”

Definition of Litter and Refuse

The Act does not provide a definition of litter or refuse, although the courts have considered the definition to be wide. Section 87 of the Act, in defining the offence of leaving litter, states that litter is anything that is thrown down, dropped or deposited and left that causes defacement, in a public place by any person. This accords with the popular interpretation that, “litter is waste in the wrong place”.

Section 86(14) allows Scottish Ministers to specify descriptions of animal droppings which are to be treated as refuse and section 89(4) allows Scottish Ministers to prescribe matter of any description which, if on a road, is to be treated as litter or refuse. An order has been made under section 86(14), The Litter (Animal Droppings) Order 1991 (S.I.1991/961), which defines dog faeces as refuse when on certain descriptions of public land. No regulations have so far been made under section 89(4).

Litter does not include detritus or recent leaf and blossom fall. Chewing gum which has adhered to hard surface areas is not assessed for the purpose of cleansing statistics relating to statutory performance indicators. Nevertheless, duty bodies should be aware that there are no apparent legal reasons why persons aggrieved by litter should not obtain an order under section 91 of the Act requiring the cleaning of even hard adhered chewing gum. (Please note that the dropping of gum is an offence – see Part II of this Code of Practice). Nor does litter include flytipped material which comprises inappropriately disposed or dumped household, commercial or industrial waste.

The Duties

Section 89(1) of the Act places a duty on certain bodies (the duty bodies) to keep their relevant land clear of litter and refuse so far as is practicable. The Antisocial Behaviour etc. (Scotland) Act 2004 gives Scottish Ministers powers to direct local authorities (and others) in the performance of this duty.

In most cases, relevant land is land which is open to the public, is open to the air and which is under the direct control of the duty body. Section 89(2) also creates a duty in respect of most public roads in Scotland to keep them clean so far as is practicable. Appendix 1 gives more information about which bodies have the duty and to which land the duty applies.

This duty can also be extended onto the owners and/or occupiers of certain types of littered land to which the public have access through the designation of Litter Control Areas (see appendix 2 for further details).

Grades of Cleanliness

The Code of Practice is based on the concept of four standards, or grades, of cleanliness:

GRADE A: no litter or refuse;

GRADE B: predominantly free of litter and refuse, apart from a few small items

GRADE C: consistent distribution of litter and refuse with minor accumulations; and

GRADE D: heavily littered with significant accumulations.

Whilst it is obvious that Grade A is the ideal, it is not reasonable to expect that standard to be maintained at all times in all places; technical difficulties may make it impossible to achieve in some circumstances, and it is unlikely to be maintained for long periods in the most heavily trafficked areas. Grade A should be seen as the standard which thorough conventional sweeping should achieve in most circumstances.

It is for the courts to decide the size of areas to be considered for the purposes of assessing defacement by litter and refuse, where relevant by comparing photographic evidence with the photographic examples in the Code of Practice, and considering any directions by the Scottish Ministers. However it is suggested that for streets, a realistic area to be considered should be in the order of 50 metres in length and include the back line, through to and including the channel or gutter.

Photographic examples and more detailed descriptions of Grades in various zones are at appendix 3.

Zones

Zoning is based on location and land use. The Code of Practice, therefore, divides land types into 12 broad categories or zones according to land usage and volume of traffic. Within the broad descriptions of zones set out below, it will be for the local authority or other duty body to allocate geographical areas to particular zones. The duty body should take a common sense approach to zoning. For example it is preferable not to divide a short street into three different zones simply because there is a variety of types of building and usage in the street. In such a case, one zone should be chosen and this should reflect the predominant use.

The zoning requirement has been in place since 1991 and it is for the duty body to allocate their land to the zones and to publicise these. It is clear that this allocation must be given due publicity, not least to avoid unjustified complaints, although how it chooses to do so will be a matter for each individual body under the duty. Annotated maps in council offices and libraries may be appropriate. Section 95 of the Act requires certain local authorities to keep a register in which are recorded details of land which has been designated a 'Litter Control Area' and where Street Litter Control Notices have been issued. Duty bodies could use a similar arrangement to publicise their zoning.

- Zone 1
 - town centres, shopping centres and shopping streets
 - major transport centres
 - central car parks
 - other busy public places
 - local roads around large secondary schools and FE colleges (1000+ students)
 - local roads within these areas
- Zone 2
 - high density residential areas (terraced, tenemental and flatted housing)
 - busy recreational land
 - suburban car parks and transport centres
 - high density industrial estates
 - local roads around primary schools and small secondary schools (<1000 students)
 - local roads within these areas
- Zone 3
 - low density residential areas
 - other recreational land including picnic areas and laybys
 - other transport centres
 - low density industrial estates
 - high-technology business parks
 - local roads within these areas
- Zone 4
 - rural / semi rural roads that do not directly link towns and villages
 - public areas in and around rural and small suburban railway stations
- Zone 5
 - amenity beaches
 - recreation beaches
 - sensitive conservation areas
 - other beaches

Zone 6	motorways strategic routes
Zone 7	rural roads linking towns and villages
Zone 8	relevant land of designated educational institutions
Zone 9	operational railway land
Zone 10	canal towpaths to which the public has access
Zone 11	land attracting large numbers of people for specific events only

It should be noted that zoning should be reviewed periodically to ensure that it is appropriate and to reflect changes in land use. It is recommended that re-zoning be done after a period of consultation.

Any person under the duty, other than a local authority, should consult the local authority when changing an existing zone or zoning previously unzoned areas.

Cleanliness Standards

A table detailing the zones with cleanliness standards and timescales are at appendix 4

1 - the zones which apply most generally, including town centres and residential areas.

2 – beaches

3 – local roads, trunk roads and motorways

4 – land of designated educational establishments

5 - railway land including public areas and specified operational land

6 - canal towpaths to which the public has access

Practical Issues

The time periods given in the table in appendix 4 are maximum response times for cleaning an area which has become littered. They do not represent intervals between cleansing, which in many cases could be longer.

To assist in making LEQ improvements duty bodies are encouraged to make arrangements to remove litter and refuse from any hedge or fence adjoining the relevant land or road, where it is accessible and visible from such land or road.

Duty bodies may wish to apply faster recovery times on sports pitches and enclosed children's play areas than required by the Code of Practice, given the nature and use of such places.

The caveat in the litter duty concerning practicability is very important. The duty applies seven days a week, however, on some occasions, circumstances may render it impracticable for the body under the duty to discharge it. It is for the courts to decide whether or not it was impracticable for a person under the duty to discharge it. In addition, in zones 1 to 4 the period from 8pm to 6am is to be discounted for the purposes of assessing compliance with the standard. Where the standard in a zone 1 area has fallen to grade B or below during this period it must be restored to grade A by 8am.

In discharging duties in relation to roads 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. Seasonal variations of such accumulations should be taken into consideration when formulating cleaning regimes. Duty bodies must be aware that litter clearance and street cleansing responsibilities include treatment of traffic islands, central reservations and off-side kerbs, verges, and hard shoulders, where provided.

Where there is an accumulation of material which is potentially hazardous to health (for example waste food), duty bodies should make every effort to remove this within a shorter timescale than is specified in the Code of Practice.

In discharging the duty in relation to railways or canals, where the origin of the litter is external to railway or canal activities, the duty body may consider it appropriate to make clearance arrangements on a partnership basis involving the railway or canal undertaking, local authorities and amenity groups. Although clearance standards and response times should be adhered to so far as is practicable, it is recognised that access, safety and traffic movement may sometimes preclude full adherence. In order to recover the position, the first practicable opportunity should be taken to undertake litter clearance in conjunction with track maintenance work.

Examples where it may be considered impracticable to comply with duty timescales for all duty bodies include:

- when there are severe weather conditions;
- when special events prevent access to the duty land;
- to avoid damage to sensitive habitats.

It may also not be considered practicable to expect bodies to meet the duty on Christmas day and/or New Years day. However every effort must be made to clear the land at the earliest opportunity.

Glossary

Amenity Beach	Beach adjoining an identified bathing water.
Detritus	Detritus comprises dust, mud, soil, grit, gravel, stones, leaf and blossom fall, plant residues and fragments of twigs and other finely divided materials.
Duty body	A body with a duty to comply with the requirements of this Code of Practice
Flytipping	Material comprising inappropriately disposed or dumped household, commercial or industrial waste.
LEQ	Local Environmental Quality
Litter	The Act does not provide a definition of litter or refuse, although the courts have considered the definition to be wide. Section 87 of the Act, in defining the offence of leaving litter, states that litter is anything that is thrown down, dropped or deposited and left that causes defacement, in a public place by any person. This accords with the popular interpretation that, “litter is waste in the wrong place”.
Open to the air	Open to the air on at least one side (notwithstanding that it may be covered)
Other beach	Beach named on OS map
Putrescible	Will naturally decompose or rot

Recreation Beach	Managed beach, Seaside Award beach, beach adjoining SEPA sampled waters
Refuse	In the context of this Code of Practice the use of the term refuse includes dog fouling.
Sensitive Conservation Area	SSSI, SAC, nature reserve
Statutory undertaker	The Litter (Statutory Undertakers) (Designation and Relevant Land) Order 1991, modified by The Railways Act 1993 (Consequential Modifications) Order 1999, makes provision as to the application of Part IV of the Environmental Protection Act 1990 (Litter, Etc) to statutory undertakers. Article 2 designates statutory undertakers for the purposes of Part IV.

Appendix 1

RELEVANT LAND OF PRINCIPAL LITTER AUTHORITIES

Under section 86(2), principal litter authorities in Scotland are councils under the Local Government etc. (Scotland) Act 1994 and Joint Boards.

In broad terms, relevant land of a principal litter authority is land, other than highways or educational land:

- which is open to the air on at least one side;
- which is under the direct control of the principal litter authority; and
- to which the public is permitted or entitled to have access.

RELEVANT LAND OF CROWN AUTHORITIES

Broadly Crown authorities have a duty in respect of their land which is open to the air and to which the public are permitted or entitled to have access (section 86(5)).

RELEVANT LAND OF DESIGNATED STATUTORY UNDERTAKERS

Broadly, designated statutory undertakers have a duty under section 86(6) in respect of land which is under their direct control to which the public are permitted or entitled to have access. The Litter (Statutory Undertakers)(Designation and Relevant Land) Order 1991 (S.I.1991/1043) designates certain transport-related undertakers as statutory undertakers for the purposes of the litter duty. These include persons authorised by any enactment to operate anything such as a railway, light railway, tramway, road transport undertaking (other than taxi or hire cars), canal, port, dock, harbour, pier or airport. This Order also sets out land which is and is not to be treated as relevant land of designated statutory undertakers. The 1991 Order has been modified by The Railways Act 1993 (Consequential Modifications) Order 1999 to place a litter duty on certain successors to the British Railways Board - essentially, operators of the British Railways Board's former railway network, operators of stations which are used in connection with that network, and operators of light maintenance depots - to ensure these companies fall within the definition of persons authorised by any enactment to carry on a railway undertaking.

It should be noted, unlike other bodies with a litter duty, railway operators have a duty in respect of certain land to which the public are not permitted or entitled to have access, such as tracks and track sides near stations and in urban areas, in addition to their public land.

RELEVANT LAND OF EDUCATIONAL INSTITUTIONS

The duty applies to land in the open air and which is under the direct control of the governing body or local education authority of designated educational institutions. Broadly, universities, publicly funded colleges of higher or further education and schools are designated for the purpose of the duty, but for full details see section 98(2) and (3) and the Litter (Designated Educational Institutions) Order 1991 (S.I.1991/561).

RELEVANT ROADS WHICH ARE THE RESPONSIBILITY OF THE LOCAL AUTHORITY

In Scotland, relevant road is defined in section 86(10) as every public road other than a trunk road which is a special road. Councils and Joint Boards in whose area the relevant road is situated have the duty under section 89(1)(a) and section 89(2)(a).

Scottish Ministers may, in certain circumstances, transfer responsibility to the roads authority by Order under section 86(11).

RELEVANT HIGHWAYS/ROADS WHICH ARE THE RESPONSIBILITY OF SCOTTISH MINISTERS

Scottish Ministers have the duty under section 89(1)(b) & section 89(2)(b) with respect to any trunk road which is a special road and any relevant road for which they are responsible.

RELEVANT LAND WITHIN A LITTER CONTROL AREA

Principal litter authorities (other than Joint Boards) may impose a duty on occupiers of other publicly-accessible land by designating that land as a 'litter control area'. Local authorities can only designate Litter Control Areas where the local authority is of the opinion that:

- because of the presence of litter or refuse, the condition of the land is detrimental to the amenities of the locality; and
- without the designation, the condition of the land would continue to be detrimental to the amenities of the locality.

The Litter Control Areas Order 1991 (S.I.1991/1325), as amended by The Litter Control Areas (Amendment) Order 1997 (S.I.1997/633), sets out the descriptions of land which can be designated as a Litter Control Area. These include public car parks, shopping centres, business

parks, cinemas, theatres, sports facilities, as well as public open-air land under the direct control of a number of bodies such as National Park Authorities and health service bodies. It is also possible to designate land on which a market is held, other than land forming part of a road. It is not possible to designate land which is subject to a duty under section 89(1) of the 1990 Act.

Appendix 2

Litter Control Areas

Principal Litter Authorities can, by order, designate certain types of littered land to which the public have access, Litter Control Areas. No order can be made unless the authority is of the opinion that, by reason of the presence of litter or refuse, the condition of the land is, and unless they make a designation order is likely to continue to be, such as to be detrimental to the amenities of the locality.

Unlike other notices, the power to make a designation order cannot be delegated – this must have full council approval. An authority proposing to make a designation order must notify persons who will be affected by the order and give them the opportunity to make representations about it within 21 days beginning with service of the notice. Their representations should also be taken into account when designating the order.

The types of land that can be designated as Litter Control Areas include car parks, retail parks, business parks, industrial estates, cinemas, bingo halls, beaches, marinas, amusement arcades, motorway service stations and picnic areas. For full details refer to the Litter Control Areas Order 1991 (S.I. 1991 No. 1325) and The Litter Control Areas (Amendment) Order 1997 (S.I. 1997 No. 633) full details of which can be found in Part III of the code at www.littercode.org.

A Litter Control Area Designation Order should be laid out as follows:

(THE FOLLOWING DOCUMENT IS AN EXAMPLE OF THE NOTICE FOR SECTION 90)

LITTER CONTROL AREA DESIGNATION ORDER

THE ENVIRONMENTAL PROTECTION ACT 1990

The (a), being of the opinion that by reason of the presence of litter refuse, the condition on the land described in paragraph 2 of this Order is, and unless they make a designation order is likely to continue to be, such as to be detrimental to the amenities of the locality, hereby make the following Order under section 90 (3) of the Environmental Protection Act 1990:-

- 1) The Order may be cited as the (b) And shall have effect from (c)
- 2) The land which –
 - i) Is delineated and shown (d) the map executed as relative to and forming part of this Order, (a) and marked “Map forming part of the (b), and
 - ii) Is briefly described in the Schedule to this Order,

Is designated as the Litter Control Area for the purpose of Part IV of the Environmental Protection Act 1990.

SCHEDULE

(e)

Date

Notes on the use of this form

- (a) Insert name of the principal litter authority making the order
- (b) Insert title of the Order, which should indicate the general area within the designated land, is situated
- (c) Insert date (which should be a date after the day on which the designated order is made) on which the designation order is to take effect.
- (d) Describe the colouring or either method used to identify the land on the map. The boundaries of the land should be clearly delineated and the map should contain sufficient detail to enable the situation of the land to be readily identified by reference to the description given in the schedule.

The description of the land should contain sufficient detail to tell the reader approximately where the land is situated without reference to the map.

Appendix 3

Descriptions and photos of Grades

The photographs below are provided for general guidance only. More detailed information, including photographs of grades in a variety of zones, is available in Part III.

Grade A



A Grade A area has no litter or refuse, it is the standard which thorough conventional sweeping/litter-picking should achieve.

Grade B



A Grade B area is predominantly free of litter and refuse apart from a few small items.

Grade C



A Grade C area has a consistent distribution of litter and refuse with minor accumulations. Where a street is littered to this degree accumulations at the back line will be common.

Grade D



A Grade D area is heavily littered with significant accumulations.

Appendix 4

Cleanliness Standards

Category Zone		CLEANLINESS STANDARD			
		A	B	C	D
1	TOWN CENTRES ETC.	← 6hrs	← 3 Hrs	← 1 Hr	
2	HIGH DENSITY RESIDENTIAL ETC.	← 12 Hrs	← 6 Hrs	← 3 Hrs	
3	LOW DENSITY RESIDENTIAL ETC.	← 2 weeks	← 12 Hrs	← 6 Hrs	
4	AREAS NOT FALLING INTO ZONES 1-3	← 2 weeks	← 1 week	← 60 Hrs	
5a	BEACHES (Amenity Beaches)	1 st June to 15 th September		← 48 Hrs	
		16 th September to 31 st May		← 4 weeks	
5b	BEACHES (Recreation Beaches)	1 st June to 15 th September		← 1 week	
		16 th September to 31 st May		← 4 weeks	
5c	BEACHES (Sensitive Conservation Areas)	Monthly hand picking of litter			
		←			
5d	BEACHES (Other Beaches)	AS NECESSARY			
		←			
6a	MOTORWAYS & STRATEGIC ROUTES (Hard Surface areas)	← 4 weeks	← 1 week		
6b	MOTORWAYS & STRATEGIC ROUTES (Grassed areas)	← 4 weeks	← 1 week		
7a	LOCAL ROADS (Hard Surface Areas)	← 2 weeks	← 5 days		
7b	LOCAL ROADS (Grassed Areas)	← 2 weeks	← 5 days		
8a	EDUCATIONAL INSTITUTIONS (Hard Surface Areas) (Term Time)	← 24 Hrs	← 24 Hrs		
8b	EDUCATIONAL INSTITUTIONS (Grassed Areas) (Term Time)	← 24 Hrs	← 24Hrs		

8c	EDUCATIONAL INSTITUTIONS (With community facilities) (Hard Surface Areas)	←	←	24 Hrs	←	24 Hrs	
8d	EDUCATIONAL INSTITUTIONS (With community facilities) (Grassed Areas)		←	24 Hrs	←	24 Hrs	
9a	OPERATIONAL RAILWAY LAND Within 100M of Platform Ends		←	2 weeks	←	5 Days	
9b	OPERATIONAL RAILWAY LAND Within Urban Areas Other than in 9a		←	6 Months	←	3 Months	
9c	OPERATIONAL RAILWAY LAND All other areas	AS NECESSARY					←
10a	CANAL TOWPATHS (Paved Areas)	←	←	2 weeks	←	5 Days	
10b	CANAL TOWPATHS (Grassed or Non-Paved Areas)		←	4 Weeks	←	1 Week	
11	PUBLIC LAND ATTRACTING LARGE NUMBERS OF PEOPLE	←	←	24 Hrs	←	24 Hrs	

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Introduction

Part II of the Code of Practice is concerned with ensuring litter management is approached holistically. It describes evaluation, awareness raising and action, and enforcement to complement the service provision detailed in Part I.

In addition, when problems arise, Part II details the process through which matters can be resolved and, if required, enforcement action can be taken. Guidance is provided for the following:

- general information for the public (see appendix 1)
- specific information for regulatory bodies
- information in relation to non-relevant land and options for problems on private land (see appendix 2).

Part II is intended to be a guide to reviewing policies and practices for litter management. Individual duty bodies must decide whether this is the right approach for their particular circumstances.

Evaluation

The first step to making improvements in litter management is to quantify the problem to be addressed, “If you can’t measure it, you can’t manage it.” Evaluation may include a variety of options:

- litter management operations reviews
- cleanliness monitoring
- attitude and awareness surveys
- stakeholder consultations.

Litter management operations reviews can often identify ways to increase the effectiveness of service delivery. This may be, for example, by combining the street cleansing and grounds maintenance operations, by reducing service levels in areas with low littering, by introducing more mechanical sweeping to suitable areas and re-deploying street cleansing orderlies.

Cleanliness monitoring can be achieved by a variety of methods and will allow the actual standards in the street to be assessed, rather than the public or local authority perception of the standards. In recent years, the Local Environmental Audit and Management System (LEAMS)

has been adopted as the statutory performance indicator for cleanliness standards by Audit Scotland and as such must be used by all 32 Scottish local authorities to assess cleanliness standards. LEAMS is the recommended minimum level of cleanliness monitoring required to measure cleanliness levels and assess improvements over time, over a council-wide area. More detailed forms of monitoring are available to provide a fuller analysis of the cleanliness standards in smaller geographical areas, such as ward level or community level. See appendix 3 for further details on cleanliness monitoring systems.

Attitude and awareness surveys can be useful in improving litter management operations by providing feedback to the local authority on its litter policies and services, establishing public perception of the litter problem and evaluating the effectiveness of campaigns. Several attitude and awareness surveys have been carried out at a national level covering the issues of litter and dog fouling in particular. For example, the Scottish Executive research report 'Public Attitudes to the Environment in Scotland 2002' found that 89% of people in Scotland thought that litter was a big or a very big problem, with 69% thinking that the problem had increased over the previous five years. See appendix 4 for further information on research findings.

Stakeholder consultations are a more in-depth method of evaluating information on service delivery for local areas. They allow local residents to be directly involved in detailing what is important to them with regard to service delivery and to highlight local problem areas. They also facilitate the opportunity for increased levels of community involvement.

Awareness raising and action

Following evaluation of problem areas, each duty body should implement a programme of awareness raising and action which could include the following:

- **Publication of zoning information.** As detailed in Part I of the Code of Practice, the zoning requirement has been in place since 1991 and it is for the duty body to allocate their land to the zones and to publicise these. It is clear that this allocation must be given due publicity, not least to avoid unjustified complaints, although how the duty body does so will be a matter for the individual duty body to decide. Annotated maps in council offices and libraries or local press releases may be appropriate. Examples of good practice in this area are detailed in Part III of the Code of Practice which can be viewed at www.littercode.org.
- **Publication of Litter Plans.** Duty bodies should inform local residents (or customers) of the standards of cleanliness that they can expect and the action to take if they are dissatisfied. It is suggested that duty bodies consider publishing this information in the

form of a litter plan which brings together all information on litter management in an area.

A litter plan might include:

- The standards of cleanliness required, not just for street cleansing but also, where appropriate, housing estate management, grounds maintenance, parks and schools management (This could also be expanded to highlight the responsibilities of other duty bodies)
- Map(s) showing the zones allocated
- The policy on providing and emptying litter bins
- Complaints procedures
- Enforcement options being used in the area
- The steps being taken to change attitudes to littering, through campaigning, education and enforcement.

- **Complaints Procedures.** A duty body must provide sufficient information to members of the public to allow complaints to be made where they are dissatisfied with any part of the service delivery.

This may be included in a Litter Plan or other document, but in any case, must provide information about the steps that will be taken to deal with the complaint, timescales for responses and be sufficiently publicised to be meaningful.

Section 91 of the Act provides for summary proceedings for persons aggrieved by litter – see appendix 5.

- **In-house Training.** Duty bodies have a responsibility to ensure that their own staff, in particular their cleansing personnel, are aware of the cleanliness standards they are expected to achieve when carrying out street cleansing operations. An understanding of the enforcement options available to assist with resolving litter problems is also required.

Enforcement

A menu of options is laid out for the following situations / circumstances:

- town centre areas
- residential areas
- industrial areas
- out of town shopping areas
- schools / educational institutions
- beach areas
- statutory undertakers
- rural areas.

Town Centre Areas

Town centre areas have proved to require the highest levels of service delivery for street cleansing due to the high density populations using these areas, the concentration of businesses plus the daily influx of workers, shoppers and other users of town centre facilities. Over the last few years, cleanliness monitoring has shown that town centre areas have the highest percentage presence of pedestrian dropped litter, with 93% of sites surveyed in town centre areas having general litter present. Within the general litter category, smoking related litter is the most common type of litter found in town centre areas, observed in 87% of sites surveyed. This is followed by confectionery related litter, present in 51% of sites, drinks related litter, present in 31% of sites, and fast food litter, present in 10% of sites surveyed.

Detailed below is a list of options for dealing with different types of litter problems commonly found in town centre areas:

- general littering
- smoking related litter
- gum
- fast food waste
- overflowing / inadequately disposed commercial waste
- advertising materials
- abandoned shopping or luggage trolleys.

General Littering

Sections 87 and 88 of the Environmental Protection Act 1990 are the available enforcement options to deal with this issue.

Section 87 – The Offence of Leaving Litter

‘If any person throws down, drops or otherwise deposits in, into or from any place to which this section applies, and leaves, anything whatsoever in such circumstances as to cause, or to contribute to, or tend to lead to, the defacement by litter of any place to which this section applies, he shall, subject to subsection (2) below, be guilty of an offence.’

Subsection (2) – No offence is committed under this section where the depositing and leaving of the thing was:

- authorised by law
- done with the consent of the owner, occupier or other person or authority having control of the place in or into which that thing was deposited.

A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale – which is £2,500 as at 2006.

It should be noted that in the above extract, litter is described as **anything** thrown down, etc by any person.

Section 88 – Fixed Penalty Fine for Littering (as amended)

Where

- (a) an authorised officer of a litter authority has reason to believe that a person has committed an offence under section 87 in the area of the authority; or
- (b) a constable has reason to believe that a person has committed an offence under that section

he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

‘Where a person is given notice under this section in respect of an offence:

- no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice
- he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.’

The current level of the fixed penalty fine is £50. This was raised initially from £10 to £25 under the Litter (Fixed Penalty) Order 1996 and further to the current level by the Litter (Fixed Penalty) (Scotland) Order 2003. The form of the notice is given in the Litter (Fixed Penalty Notices) (Scotland) Order 2004. In Scotland, the revenue from the fixed penalty notices is retained by the litter authority.

Powers for police officers to issue Fixed Penalty Notices for littering were introduced by the Antisocial Behaviour etc. (Scotland) Act 2004, section 56, which amends section 88. A notice template for a section 88 Fixed Penalty Notice is attached in appendix 6.

If offenders do not take the opportunity to pay the Fixed Penalty Notice, they will be reported to the Procurator Fiscal for the section 87 offence.

There has been continuing debate about the range of circumstances in which the issuing of a Fixed Penalty Notice is appropriate. Appendix 7 shows a range of circumstances that are suitable as well as a range of circumstances where it is recommended that a section 88 Fixed Penalty Notice is not the most appropriate enforcement option. Please note that this list is not comprehensive but details a range of examples to clarify the types of situations where use of section 88 is appropriate.

Youth enforcement

The use of Fixed Penalty Notices in the case of offenders under the age of 16 has been the subject of debate since the introduction of the legislation.

Section 88 of the Act provides the opportunity for an offender to discharge any liability to conviction by paying the fixed penalty. However, a child committing an offence under section 87 would generally not be liable to conviction. This offence is not one which should be reported to the Procurator Fiscal in terms of the Lord Advocate's Directions as to the prosecution of children and therefore should be reported to the reporter only. Any decision of the reporter or children's hearing does not result in conviction.

In addition, the Children (Scotland) Act 1995 requires that the following central principles be considered in reaching decisions: (a) the welfare of the child is the paramount consideration; (b) no compulsory intervention should be made unless it would be better for the child than no compulsory intervention at all; and that (c) children should be given the opportunity to express a view and, if they do so, consideration should be given to the child's views.

A warning letter is a more appropriate response to section 87 offences by children. The content of the warning letter will depend on any information, education or awareness raising programme which is in operation. However, an example of a warning letter is included in appendix 8 for guidance.

Smoking Related Litter

Smoking related litter is the most common type of litter found across Scotland for various reasons;

- many people do not consider dropping cigarette butts as littering
- there is a fear of causing bin fires
- there is a misconception that cigarette butts will biodegrade.

Following the introduction of the ban on smoking in enclosed public spaces by the Smoking, Health and Social Care (Scotland) Act 2005, facilities for the disposal of cigarette litter have greatly increased. This has been achieved by local authorities adding smoking litter facilities to existing litter bins, many businesses providing smoking related litter bins at the entrance to their premises and personal ashtrays becoming widely available. See Part III for good practice examples in dealing with this issue.

Section 87 and 88 of the Act are the recommended enforcement options to deal with smoking related litter. See details for the use of these powers under the general littering section.

Gum

As detailed in Part I, the act of throwing down, dropping or depositing and leaving gum is an offence under Section 87 of the Act. Therefore Section 87 and 88 are the recommended enforcement options to deal with chewing gum litter. See details for the use of these powers under the general littering section.

Fast Food Litter

Fast food in this context is defined as, ‘any edible product, other than confectionery, which can be eaten immediately upon exiting the premises in which it was bought and any associated packaging.’

Although businesses do not drop fast food litter themselves, they provide the food and packaging materials which can be dropped by their customers. Therefore, businesses causing a problem with fast food litter from their premises can be encouraged and, if necessary, required to assist with litter control measures. Part III of the Code of Practice details examples of voluntary partnership arrangements to reduce fast food litter. Should voluntary partnership arrangements be ineffective, the following enforcement option should be used.

Section 93 and 94 – Street Litter Control Notices

A principal litter authority may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices, ‘street litter control notices’, imposing requirements on occupiers of premises in relation to such litter or refuse. If the litter authority is satisfied, in respect of any premises which are of a description prescribed under section 94 and have a frontage on a street in their area, that:

- there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises

- the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse
- there is produced, as a result of the activities carried out on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, which is in the vicinity of the premises,

the litter authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.

Notices must specify appropriate and reasonable requirements in relation to the area of open land which adjoins the vicinity of the frontage of the premises on the street – the ‘specified area’. Notices can include clearing litter and the provision or emptying of litter bins. The owner cannot be required to clear litter or refuse from any carriageway unless it is closed to all vehicular traffic.

A person on whom a notice is served may appeal against the notice to the Sheriff by way of summary application, within 21 days of the notice being served. If it appears to the litter authority that a person has failed or is failing to comply with any requirement imposed by a notice, the authority may apply to the Sheriff by way of summary application for an order requiring the person to comply with the requirement within such time as may be specified in the order. If a person fails to comply with an order, without reasonable excuse, they shall be guilty of an offence and liable to summary conviction to a fine not exceeding level 4 on the standard scale – which is currently £2,500 as at 2006.

Types of land on which a street litter control notice may be served include:

- up to 10 metres from an automated teller machine
- up to 100 metres away from various premises as described in The Street Litter Control Notices Order 1991, amended 1997. These include betting offices and shops, premises where lottery tickets are sold, premises where goods are displayed adjacent to or in front of the premises, fast food premises.

Templates for an ‘intention to serve notice’ and a Street Litter Control Notice are attached in appendix 9.

It should be noted that under section 95 of the Act, it is the duty of each principal litter authority to maintain a register containing copies of any Street Litter Control Notices issued, added or varied. Details are required to be kept in the register for so long as the order or notice is in force.

The register is to be made available to the public for inspection free of charge at all reasonable times, and facilities should be made available for the public to make copies of the documents on payment of a reasonable charge.

The offence of dropping fast food litter should be dealt with as detailed in the general litter section using sections 87 and 88 of the Environmental Protection Act 1990. Refer to the general litter section for full details.

Overflowing / Inadequately Disposed of Commercial Waste

Commercial waste is waste from a trade or business, sport, recreation or entertainment facility, offices or showrooms, or premises of clubs or associations.

Inadequately disposed of and badly presented commercial waste is a significant contributor to the litter problem on Scotland's streets. Scotland wide 7% of streets have been recorded as being affected by this type of litter, however in certain central Scotland town centres, this figure rises as high as 35%.

The available enforcement options for dealing with overflowing or inadequately disposed of commercial waste include the following:

Section 33 - Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste (as amended)

This section forms the foundation of the waste licensing system by prohibiting the deposit, treatment, keeping or disposal of controlled waste in or on land. It is an offence not only to carry out such activities, but also to 'knowingly cause or knowingly permit' them.

This section applies to household, industrial and commercial waste.

Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.

A person who commits an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £40,000 or both.

Defences include:

- took all reasonable precautions and all due diligence
- done in an emergency in order to avoid danger to the public.

Section 33A, inserted by section 55 of the Antisocial Behaviour etc. (Scotland) Act 2004 provides for the issue of Fixed Penalty Notices for offences under section 33. Powers are given to authorised local authority officers, officers of a waste regulation authority and police officers where they believe that a person has committed a relevant offence to issue a notice in respect of the offence. A notice under this section is a notice offering the opportunity, by paying a fixed penalty, of discharging any liability to conviction for the offence to which it relates.

A fixed penalty payable in pursuance of a notice under this section shall be payable to the local authority in whose area the offence was committed and will be retained by the local authority.

Section 34 - Duty of care etc. as respects waste

It shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances:

- To prevent any contravention by any other person of section 33
- To prevent the escape of the waste from his control or that of any other person
- On the transfer of waste, to secure that the transfer is only to an authorised person or to a person for authorised transport purposes and that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section and to comply with the duty as respects the escape of waste.

The duty of care does not otherwise apply to the occupier of domestic property as respects the household waste produced on that property.

However, the occupier of the domestic property as respects the household waste produced on the property, must take reasonable steps to secure that any transfer of waste is only to an authorised person or to a person for authorised transport purposes.

Additionally, the duty of care applies to waste from a workshop on that property, waste brought from other property and building waste from work undertaken on that property by a contractor.

Practical guidance for everyone who is under the duty is included in, *Waste Management, The Duty of Care, A Code of Practice*. This code of practice is admissible in evidence and if any provision appears to the court to be relevant to any questions arising in the proceedings it shall be taken into account in determining that question.

Section 47 - Receptacles for commercial or industrial waste

A waste collection authority may, at the request of any person, supply him with receptacles for commercial or industrial waste which he has requested the authority to arrange to collect and shall make a reasonable charge for any receptacle supplied unless in the case of a receptacle for commercial waste the authority considers it appropriate not to make a charge.

If it appears to a waste collection authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a kind and number specified. The size and number required must be reasonable.

The waste collection authority may make provisions with respect to:

- size, construction and maintenance of receptacles,
- the placing of receptacles
- the substances or articles which may or may not be put into the receptacles.

A person who fails, without reasonable excuse, to comply with any requirements imposed under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale – which is currently £1,000 as at 2006. The occupier of the premises has 21 days to appeal against the requirements of a notice served on him.

Advertising Materials

Leafleting, both the handing of materials to pedestrians and the placing of materials on vehicle windscreens, contributes significantly to litter in many town centres.

In the case of pedestrians subsequently dropping the leaflets in the street sections 87 and 88 apply as with any other litter. However, if the leaflet distributor places the leaflets on vehicle windscreens, or other public place, then sections 87 and 88 apply to them directly.

Shopping Trolleys

Abandoned shopping trolleys are an issue in many town centre areas. These pose a serious management issue particularly within town centre car parks.

Section 99 and Schedule 4 of the Act provides local authorities with a method of dealing with abandoned trolleys in their area.

A local authority may, after consultation with those persons who may be affected by the resolution, pass a resolution to apply Schedule 4 to the area. A notice must be published in at least one newspaper circulating in the local authority area to the effect that the resolution has been passed. When the resolution has been made, the schedule then applies to any trolley, on any land, which appears to an authorised officer to have been abandoned.

Trolleys abandoned on public land may be seized and removed to a local authority facility for storage. Within 14 days of seizing a trolley, the local authority must serve on the owner of the trolley a notice stating that the trolley has been removed and is being stored by the local authority, where it is being stored and that, if it is not claimed, the local authority will dispose of it.

The local authority must then keep the trolley for a period of six weeks and may thereafter sell or dispose of the trolley.

If, within the six week period, the trolley is claimed, the local authority must return it to its owner and may make a charge for this. The level of the charge must cover the local authority's costs for providing this service including uplift, storage and delivery.

It shall be the duty of a local authority from time to time to consult about the operation of Schedule 4 with the persons who appear to be affected by its operation.

Residential areas

Residential areas tend to be split into two main categories: high density areas, such as terraced, tenemental and flatted housing; and low density areas such as detached and semi-detached housing. Over the last few years, cleanliness monitoring has shown that high density residential areas tend to have the highest level of litter problems due to increased population and footfall levels. Over 80% of sites surveyed have been found to contain pedestrian dropped litter, with smoking related litter being the main type of litter, found in 80% of sites surveyed in high density housing areas and 69% of sites surveyed in low density housing areas. This is followed by high levels of confectionery related litter and drinks related litter. Domestic waste spillages are found more commonly in residential areas, as are higher levels of dog fouling.

Detailed below is a list of options for dealing with different types of litter or refuse problems commonly found in residential areas:

- general littering
- overflowing / inadequately disposed domestic waste
- dog fouling

General Littering

Section 87 and 88 of the Environmental Protection Act 1990 are the available enforcement options to deal with this issue. See details for the use of these powers under the general littering section in the town centre areas section.

Overflowing / Inadequately Disposed Domestic Waste

Recent research shows that whilst 24% of flytipping incidents can be attributed to shops, offices and builders, some 73% of incidents are directly attributable to households (remaining 3% not easily attributed). However, all householders now have a responsibility, under Duty of Care, to ensure their waste is passed to authorised carriers. Registered waste carriers, other than local authorities, can now be found online by visiting the waste carrier register at www.sepa.org.uk.

The Waste (Scotland) Regulations 2005 introduced the ‘Householder Duty of Care’. Regulation 3(3) replaces section 34(2) (duty of care etc. as respects waste) of the 1990 Act such that an occupier of domestic property shall take reasonable steps to ensure that any household waste produced on the property is transferred to an authorised person, but shall not otherwise be subject to the duty of care imposed by section 34(1) of that Act.

Powers to address waste overflowing, dumped and/or badly stored in back courts are available to local authorities. Please refer to Part III of the Code of Practice for further information.

Section 46 - Receptacles for household waste

Where a waste collection authority has a duty to arrange for the collection of household waste, the authority may require the occupier to place the waste for collection in receptacles of a kind and number specified.

The type and number of the receptacles required to be used shall be such only as are reasonable but separate receptacles or compartments of receptacles may be required to be used for waste which is to be recycled and waste which is not.

In making these requirements, the authority may make provision with respect to –

- Size, construction and maintenance of the receptacles
- The placing of the receptacles
- The substances or articles which may or may not be put into the receptacles and precautions to be taken where particular substances or articles are put into them.

Occupiers have a 21 day right of appeal against any requirements imposed on them. A person who fails, without reasonable excuse, to comply with any requirements imposed by this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale – which is currently £1,000 as at 2006.

Dog Fouling

Although dog fouling removal by duty bodies to comply with cleanliness standards is covered by the Act, enforcement options for those who fail to clean up after their dog fouling is not. Please refer to The Dog Fouling (Scotland) Act 2003 for details of enforcement options.

Industrial Areas

Both traditional industrial estates and modern technology parks are affected, in common with most other land types, by litter and badly stored or presented waste, and by flytipping. In many cases these areas are in private ownership and duty bodies, as defined in the Act, have limited responsibility for cleansing. However, this does not preclude enforcement action being taken in support of a landowner's obligation to maintain his area.

General Littering

Section 87 and 88 of the Environmental Protection Act 1990 are the available enforcement options to deal with this issue. See details for the use of these powers under the general littering section in the town centre areas section.

Industrial Waste

Section 75 of the 1990 Act, as amended by the Waste (Scotland) Regulations 2005, provides a definition of industrial waste.

‘...industrial waste means waste from any of the following premises –

- (a) any factory (within the meaning of the Factories Act 1961);
- (b) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air;
- (c) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services;
- (d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services; or
- (e) any mine or quarry.’

Industrial waste can be dealt with similarly to commercial waste: Section 33 - Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste; Section 34 - Duty of care etc. as respects waste; Section 47 - Receptacles for commercial or industrial waste. Please refer to the town centre areas section for additional information.

Litter Control Areas

Section 90 makes provision for a local authority to designate a Litter Control Area where it considers that, without such designation, the presence of litter or refuse means land is, and will continue to be, in a condition which is likely to be detrimental to the amenity of the area. The

types of land which can be designated are defined by the Litter Control Areas Order 1991 (amended 1997) and include public car parks, shopping centres, business parks, industrial estates, cinemas, theatres, sports facilities, beaches, promenades, aerodromes, marinas, public open space under the control of certain public bodies, land used for markets, motorway service stations, roadside picnic areas, camping and caravan sites.

Litter Control Areas are, therefore, generally areas that are accessible to the public but privately rather than publicly owned. Those who may be affected by the proposed designation must be given 21 days to make representations and these must be taken into account in deciding on the designation (section 90(6)). If the designation is made, the land becomes relevant land and the occupier is then required to clear the land and keep it free of litter in accordance with section 89 of the Act.

Information regarding this process, and a sample notice, is available in Part I of the Code of Practice.

Litter Abatement Notices

Where a local authority as Principal Litter Authority is satisfied that relevant land (excluding roads) has been defaced by litter or that this is likely to recur, it may issue a Litter Abatement Notice, under section 92, to the duty body.

The notice will specify the time within which the litter must be cleared and/or prohibit further littering. If the duty body does not comply with the notice, an offence is committed which, on conviction, may result in a fine plus an additional fine for each day on which the offence continues. The notice will be served on the occupier of the land or, if there is no occupier, on the owner.

Litter Abatement Notice

**ENVIRONMENTAL PROTECTION ACT 1990
SECTION 92(1)**

The..... (*name of principal litter authority issuing notice*), being satisfied as respects the relevant land described in paragraph 2-

- (i) that it is defaced by litter or refuse, or
- (ii) that its defacement by litter or refuse is likely to recur.

(*delete (i) or (ii) if inapplicable*), hereby serves the following Notice:

1 This Notice is served on the following *Crown authority/designated statutory undertaker/governing body of a designated educational institution (delete as appropriate)*, as the responsible body having a duty under section 89(1) of the Environmental Protection Act 1990 to keep its relevant land, so far as is practicable, clear of litter or refuse:

Name of responsible body:

Address:

and,

- i. Requires that the litter or refuse is cleared within (*specify time period for compliance, e.g. 7 days*) from the date on which this notice is served.

and/or,

- ii. Prohibits the responsible body from permitting that land to become defaced by litter or refuse again.

(*if appropriate, delete whichever of (i) or (ii) is not to apply*)

2 The relevant land to which this notice applies is the land which -

- i. is delineated and shown (*describe colouring or other method used to identify the land on the map*) on the map forming part of this Notice, and
- ii. is briefly described in the Schedule to this Notice.

3 An appeal against this notice may be made to the sheriff within 21 days from the date on which it is served. The sheriff must allow the appeal if you can prove that the duty under section 89(1) has been complied with; the Code of Practice on Litter and Refuse (issued pursuant to section 89(7)) is admissible as evidence in respect of compliance with that duty.

4 If you fail without reasonable excuse to comply with the *requirement and/or prohibition (delete as appropriate)* in paragraph 1:

- you may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500), plus

further fines of one-twentieth of that sum (currently £125) a day for each day that the offence continues after conviction.

- the local authority is entitled, in respect of land other than Crown land occupied for naval, military or air force purposes, or certain land of designated statutory undertakers, to enter your land, clear the litter, and charge you for the costs incurred.

SCHEDULE

(Description of relevant land)

DATE

Out-of-Town Shopping Centres

With the growth in out-of-town shopping, litter and refuse issues, which were traditionally confined to town centre areas, have become more prevalent on the outskirts of towns and cities. As is the case with industrial areas many of these areas are in private ownership and duty bodies, as defined in the Act, have limited responsibility for cleansing. However, this does not preclude enforcement action being taken in support of a landowner's obligation to maintain his area.

General Littering

Section 87 and 88 of the Environmental Protection Act 1990 are the available enforcement options to deal with this issue. See details for the use of these powers under the general littering section in the town centre areas section.

Commercial Waste

Overflowing / inadequately disposed of commercial waste may be an issue in this type of area. Legislation which applies includes: Section 33 - Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste; Section 34 - Duty of care etc. as respects waste; Section 47 - Receptacles for commercial or industrial waste. (All references are to the 1990 Act.) Please refer to the town centre areas section for additional information.

Litter Control Areas and Litter Abatement Notices

Please refer to the Industrial Areas section for further information.

Educational Institutions

There is often a litter problem in and around schools and colleges.

School grounds are included within the Code of Practice for the purposes of cleansing.

However, although they are relevant land as defined in the Act, the majority of schools are in local authority ownership, and the local authority cannot take formal action against itself to deal with litter within school grounds. Compliance with the Code of Practice is clearly a management issue for the school and schools must be aware of their duty under the Code of Practice.

Please refer to the Town Centre Areas section for information about youth enforcement for dealing with young people around schools.

Further education colleges and universities are not normally in local authority ownership.

Relevant land in this case is land of a designated educational institution that is open to the air and is under the control of a governing body. The governing body is therefore the duty body in terms of the Code of Practice and as such may be served with a Litter Abatement Notice by the local authority. The notice will specify the time within which the litter must be cleared and/or prohibit further littering.

In addition, fixed penalty notice powers are available around colleges and universities (see appendices 6 and 7).

Section 91 of the Environmental Protection Act 1990 - Summary proceedings by persons aggrieved by litter - applies to schools, colleges and universities in the same way as it applies to all other duty bodies (see appendix 5).

Beaches

The duty on any body in relation to beaches extends only to land above Mean High Water Springs.

Due to the nature of their use and their location, beaches have specific issues in relation to litter and refuse.

- Within the bathing season amenity and recreation beaches will experience high daily visitor numbers whilst in the winter months types of user and usage changes. Other beaches, which in Scotland will be mainly rural or close to small settlements, may experience smaller visitor numbers overall but the pattern of usage is generally more consistent.
- Beaches experience the added problem of “marine litter” particularly during the winter months and periods of inclement weather. “Marine litter” is defined by the Marine Conservation Society (MCS) as, ‘all manufactured or processed items or materials that have been discarded, disposed of or abandoned, by intent or accident, in an aquatic environment.’
- Much of the waste discarded at sea inevitably is washed ashore. Coastal litter can be categorised according to material type (e.g. plastic, glass, sanitary, metal) and comes from four main sources, namely recreational and tourism related litter, fishing debris, sewage related matter and shipping and offshore waste. The MCS Beachwatch Survey 2005 recorded an annual increase in the amount of litter on beaches. On average one piece of litter was recorded for every 51cm of beach surveyed. The density of plastic bags found on Scottish beaches increased by 41% from the 2004 survey and cigarette stubs increased by 273%. Please refer to Part III of the Code of Practice for additional information.

As is the case for relevant land of any duty body, beaches may be subject to the provisions of Section 90 – Litter Control Areas and Section 92 - Litter Abatement Notices. Please refer to the Industrial Areas section for information on the use of these provisions.

Section 91 of the Environmental Protection Act 1990 - Summary proceedings by persons aggrieved by litter – also applies to beaches (see appendix 5).

Statutory Undertakers

‘Statutory undertaker’ means—

- (a) any person authorised by any enactment to carry on any railway, light railway, tramway or road transport undertaking;
- (b) any person authorised by any enactment to carry on any canal, inland navigation, dock, harbour or pier undertaking; or
- (c) any relevant airport operator (within the meaning of Part V of the [1986 c. 31.] Airports Act 1986).

Detailed below is a list of options for dealing with different types of litter and waste problems commonly found in statutory undertakers areas:

- general littering
- dog fouling

General Littering

Section 87 and 88 of the Environmental Protection Act 1990 are the available enforcement options to deal with this issue. See details for the use of these powers under the general littering section in the town centre areas section.

Dog Fouling

Although dog fouling removal by duty bodies to comply with cleanliness standards is covered by the Act, enforcement options for those who fail to clean up after their dog fouling is not. Please refer to The Dog Fouling (Scotland) Act 2003 for details of enforcement options.

Litter Abatement Notices

Where a local authority as Principal Litter Authority is satisfied that relevant land (excluding roads) has been defaced by litter or that this is likely to recur, it may issue a Litter Abatement Notice, under section 92, to the duty body.

The notice will specify the time within which the litter must be cleared and/or prohibit further littering. If the duty body does not comply with the notice, and an offence is committed which, on conviction, may result in a fine plus an additional fine for each day on which the offence continues. The notice will be served on the occupier of the land or, if there is no occupier, on the owner.

Rural Areas

There are almost 1 million people currently living in rural Scotland, almost 20% of the population of Scotland. Rural communities are affected by similar litter and refuse issues as urban communities, albeit on a reduced scale. People living in rural areas are less likely to encounter anti-social behaviour than people in the rest of Scotland. Some 18% of people in accessible rural areas and 10% in remote rural areas report "rubbish or litter" problems compared with 32% in the rest of Scotland according to the Scottish Executive Annual Rural Report 2004.

Detailed below is a list of options for dealing with different types of litter and waste problems commonly found in rural areas:

- general littering
- dog fouling

General Littering

Section 87 and 88 of the Environmental Protection Act 1990 are the available enforcement options to deal with this issue. See details for the use of these powers under the general littering section in the town centre areas section.

Dog Fouling

Although dog fouling removal by duty bodies to comply with cleanliness standards is covered by the Act, enforcement options for those who fail to clean up after their dog fouling is not. Please refer to The Dog Fouling (Scotland) Act 2003 for details of enforcement options.

Glossary

Annotated	Furnished with critical commentary or explanatory notes.
Attitude and Awareness Survey	A survey of key stakeholders' (often local residents) understanding and opinion on a particular issue or set of issues.
Bathing season	Defined in the Water Framework Directive as 'the period during which large numbers of bathers can be expected.' In Scotland the period is currently 1 June – 15 September.
Mean high water springs	The average of high water heights occurring at the time of spring tides.
Modern technology park	Low density area with a high proportion of service industry providers.
Stakeholder	Any party with an interest in an organisation or enterprise, e.g. employees, customers, suppliers or the local community. This is due to the effect that the organisation's activities will have on them, although they are a "third party" in that they are outside the organisation.
Statutory nuisance	Defined by section 79 of the Environmental Protection Act 1990.
Statutory Performance Indicator	Information that must be published by councils about their performance specified by the Audit Commission under the Local Government Act 1992. The information enables comparisons to be made between the standards of performance achieved by different local authorities in the specified financial year; and the standards of performance achieved by such authorities in different financial years.
Traditional industrial estate	Generally well established, high-density area with a relatively high proportion of manufacturing premises.

Appendix 1

Litter and the Law in Scotland

A Guide for the Public

What are the litter laws?

The Environmental Protection Act 1990 (EPA) makes 'Duty Bodies' responsible for keeping their land clear of litter and refuse. It also gives both local authorities and members of the public rights to take legal action to get areas cleaned up.

Who are Duty Bodies?

They are organisations with a legal responsibility for keeping specified public places clear of litter and refuse - often described as a 'cleansing duty'. They are mainly local authorities and statutory undertakers such as Network Rail, and also schools, colleges and universities.

What is their responsibility?

Quite simply, to make sure that public land and roads under their control are kept free from litter and refuse, as far as is practicably possible and within reason. Full details of how they must comply with this cleansing duty are contained in the Code of Practice on Litter and Refuse which accompanies Part IV (section 89) of the EPA.

What does the cleansing duty involve?

Based on land use and time, the Code of Practice sets out reasonable and acceptable standards of cleanliness which Duty Bodies can be expected to meet. What matters is maintaining the cleanliness of an area, rather than how often it is cleaned.

What is litter?

The EPA does not provide a definition of litter or refuse, although the courts have considered the definition to be wide. Section 87 of the EPA, in defining the offence of leaving litter, states that litter is anything that is thrown down, dropped or deposited by any person and left that causes defacement, in a public place. This accords with the popular interpretation that, "Litter is waste in the wrong place."

Litter includes mainly synthetic materials, often associated with smoking, eating and drinking, that are improperly discarded and left by members of the public, are spilt during waste management operations or have escaped from badly presented household, commercial or

industrial waste. Litter may also include material which will eventually decay such as food waste.

Litter Measurements

Keep Scotland Beautiful carries out surveys across the country measuring different sources and types of litter and refuse, including: smoking related litter, fast food packaging, dog fouling and business waste. The information is used to detect trends in litter deposits, to help local authorities to make efficient use of their resources, and to inform future litter policies and campaigns.

Cost of clearing up litter

The cost of clearing litter across Scottish local authorities currently stands at £65 million per year. This cost is absorbed into council tax charges paid by the public and does not include clearing litter in other land areas, such as motorways or school grounds.

How do I know if a place is clean enough?

Compliance with the Code of Practice is measured in two ways: (i) cleanliness grades which set out how clean an area should be, and (ii) cleanliness standards which indicate responsible times for cleaning up. The photographs below illustrate the cleanliness grades defined by the Code of Practice on Litter and Refuse.

Grade A - No litter or refuse



Grade B - Predominantly free of litter and refuse, apart from a few small items



Grade C - Widespread distribution of litter and refuse with minor accumulations



Grade D - Heavily littered with significant accumulations



All areas have to be 'zoned'. Each zone has a timescale within which the Duty Body should return it to a litter-free standard. The following table can help you work out how quickly an area should be brought to a cleanliness grade A. For example, if a town centre area (zone 1) deteriorates to grade D it should be restored to a grade A within one hour.

Category Zone		CLEANLINESS STANDARD			
		A	B	C	D
1	TOWN CENTRES ETC.	←	6hrs	← 3 Hrs	← 1 Hr
2	HIGH DENSITY RESIDENTIAL ETC.	←	12 Hrs	← 6 Hrs	← 3 Hrs
3	LOW DENSITY RESIDENTIAL ETC.	←	2 weeks	← 12 Hrs	← 6 Hrs
4	AREAS NOT FALLING INTO ZONES 1-3	←	2 weeks	← 1 week	← 60 Hrs
5a	BEACHES (Amenity Beaches)		1 st June to 15 th September	← 48 Hrs	← 4 weeks
5b	BEACHES (Recreation Beaches)		1 st June to 15 th September	← 1 week	← 4 weeks
5c	BEACHES (Sensitive Conservation Areas)		Monthly hand picking of litter	←	
5d	BEACHES (Other Beaches)		AS NECESSARY	←	
6a	MOTORWAYS & STRATEGIC ROUTES (Hard Surface areas)	←		← 4 weeks	← 1 week
6b	MOTORWAYS & STRATEGIC ROUTES (Grassed areas)		←	← 4 weeks	← 1 week
7a	LOCAL ROADS (Hard Surface Areas)	←		← 2 weeks	← 5 days
7b	LOCAL ROADS (Grassed Areas)		←	← 2 weeks	← 5 days
8a	EDUCATIONAL INSTITUTIONS (Hard Surface Areas) (Term Time)	←		← 24 Hrs	← 24 Hrs
8b	EDUCATIONAL INSTITUTIONS (Grassed Areas) (Term Time)		←	← 24 Hrs	← 24 Hrs
8c	EDUCATIONAL INSTITUTIONS (With community facilities) (Hard Surface Areas)	←		← 24 Hrs	← 24 Hrs

8d	EDUCATIONAL INSTITUTIONS (With community facilities) (Grassed Areas)		← 24 Hrs	← 24 Hrs
9a	OPERATIONAL RAILWAY LAND Within 100M of Platform Ends		← 2 weeks	← 5 Days
9b	OPERATIONAL RAILWAY LAND Within Urban Areas Other than in 9a		← 6 Months	← 3 Months
9c	OPERATIONAL RAILWAY LAND All other areas	AS NECESSARY ←		
10a	CANAL TOWPATHS (Paved Areas)	←	← 2 weeks	← 5 Days
10b	CANAL TOWPATHS (Grassed or Non-Paved Areas)		← 4 Weeks	← 1 Week
11	PUBLIC LAND ATTRACTING LARGE NUMBERS OF PEOPLE	← 24 Hrs	← 24 Hrs	← 24 Hrs

What can a person do if things go wrong?

The EPA gives a member of the public the right to take legal action to have litter removed where an area falls below the standard for longer than is allowed.

Before exercising that right it is essential that the Duty Body is given a chance to clean up. Make a formal complaint by telephone or in writing, being specific about location, type and amount of litter. Some local authorities have litter ‘hotlines’ and respond quickly to complaints. If your council does not have a special number to ring, litter complaints are usually dealt with by Cleansing, Environmental Health or Technical Services departments.

If an area falls below the standard and the Duty Body does not put matters right, a member of the public can take legal action to get a Litter Abatement Order. The Order means that the Duty Body must clean up the area. Action is taken through the Sheriff Court and there is a charge to apply for the Order.

For details on how to do this, visit www.littercode.org . As with any legal action, the process may be time-consuming and complicated, but has been successfully used.

What can local authorities do?

As well as giving rights to the member of the public, the EPA gives powers to local authorities to take action against individuals and businesses that create litter, and powers to have areas cleaned up. Leaving or depositing litter is a criminal offence, subject to a maximum fine of £2,500. Either the police or a local authority can prosecute litterers. In addition, Fixed Penalty Notices of £50 can be issued for littering by local authority staff or the police.

Litter Free Areas

Where a litter problem can be clearly traced to certain types of business, such as takeaway food premises, the local authority can issue a Street Litter Control Notice. This makes the owner responsible for keeping the front of the premises, plus a reasonable distance either side, clear of litter. If certain kinds of private land to which the public have access, such as supermarket car parks, are badly littered the local authority can declare a Litter Control Area. The owner or occupier of the land is then under a duty to clear the land and keep it free of litter.

Those with a duty under the EPA to keep land free of litter can be served with a Litter Abatement Notice by the local authority. Once served with a Notice, the owner or occupier must clean up the area within a given period of time. If the Notice is not complied with there can be a fine, plus a daily fine if the offence continues.

Getting Scotland Up To Standard

Legislation alone will not achieve a clean Scotland. We all have a responsibility to keep our local environment clean and tidy. For further information on how you can get involved in improving your local environment contact Keep Scotland Beautiful or visit www.keepsotlandtidy.org .

Disclaimer

This document can only serve as a guide to, and synopsis of, the law relating to litter. It does not constitute legal advice. It may be misleading if relied upon as a complete explanation of the legal issues involved. If any matter is to be acted upon, the full texts of Part IV of the Environmental Protection Act 1990 as amended and the relevant statutory instruments must be consulted. For further details please visit www.opsi.gov.uk/legislation .

Appendix 2

Powers to Tackle Litter and Refuse on Non-relevant and Private Land

This appendix summarises the main legislative provisions governing land not covered by the litter duty in section 89 of the Environmental Protection Act 1990. This appendix can only serve as a guide to, and synopsis of, the law relating to litter. It does not constitute legal advice. It may be misleading if relied upon as a complete explanation of the legal issues involved. If any matter is to be acted upon, the full legal texts and the relevant statutory instruments must be consulted. For further details please visit www.opsi.gov.uk/legislation . Examples detailing the use of these additional powers will be available on Part III of the Code of Practice which can be viewed at www.littercode.org

Section 90 of the Environmental Protection Act 1990 enables local authorities to designate land of a prescribed description as a Litter Control Area if they consider that the presence of litter or refuse on that land is detrimental to the amenities of the area and is likely to remain so. This places a duty on each occupier of that land to ensure that the land he occupies is kept clear of litter and refuse, so far as is practicable. Failure to discharge the duty may result in a summary application being made to the Sheriff by an aggrieved citizen or the local authority as detailed below.

Section 91 of the Environmental Protection Act 1990 gives citizens aggrieved by the defacement by litter or refuse of relevant land the power to make a summary application to the Sheriff. Before instituting proceedings under this section, the complainant shall give to the person not less than 5 days written notice of his intention to make the complaint and the notice shall specify the matter complained of. If the Sheriff is satisfied that the land in question is defaced by litter or refuse the court may make a litter abatement order requiring the person against whom the proceedings are taken to clear the litter or refuse.

Section 92 of the Environmental Protection Act 1990 gives local authorities the power to serve a litter abatement notice if they are satisfied that the relevant land of a duty body is defaced by litter or refuse or that defacement by litter or refuse is likely to recur. The notice can specify a requirement that the litter or refuse be cleared within a time specified in the notice and / or a prohibition on permitting the land to become defaced by litter or refuse. The person served with the notice may appeal to the sheriff by way of summary application within a period of 21 days. If a person on whom a litter abatement notice is served, without reasonable excuse,

fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500 as at 2006) together with a further fine of an amount equal to one-twentieth of that level for each day on which the offence continues after the conviction.

If a person on whom a litter abatement notice is served fails to comply with the requirements imposed by the notice, the authority may:

- Enter on the land and clear the litter or refuse,
- Recover from that person the expenditure attributable to their having done so.

This point does not apply in relation to Crown land or relevant land of statutory undertakers.

Section 59 of the Environmental Protection Act 1990 - If any controlled waste is deposited in or on any land in the area of a waste regulation authority or waste collection authority the authority may, by notice served on him, require the occupier to do either or both of the following:

- To remove the waste from the land within a specific period not less than a period of twenty-one days beginning with the service of the notice,
- To take within such a period specific steps with a view to eliminating or reducing the consequences of the deposit of the waste.

The occupier has an appeal period of 21 days, by way of summary application to the sheriff court. The court may quash the requirements if it is satisfied that:

- The appellant neither deposited or knowingly caused or knowingly permitted the deposit of the waste,
- There is a material defect in the notice.

If a person on whom a requirement has been imposed fails, without reasonable excuse, to comply with the requirement he shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (£5,000 as at 2006) and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence.

Where a person on whom a requirement has been imposed fails to comply with the requirement, the authority may do what that person was required to do and may recover from him any expenses reasonably incurred by the authority in doing it.

Section 4 of the Prevention of Damage by Pests Act 1949 gives local authorities the power to serve a notice on the owner and / or occupier of any land to remove accumulations of waste where damage by pests is likely to occur. The notice can require the owner and / or occupier to take, within such reasonable period as specified in the notice, reasonable steps such as removing litter. Costs can be recovered should a council have to remove it.

Section 6 of the Refuse Disposal (Amenity) Act 1978 gives local authorities the power to remove from land open to the air any ‘thing’ other than a motor vehicle which 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 179 of the Town and Country Planning (Scotland) Act 1997 enables a local planning authority to require the owner and occupier of land to take specific steps to remedy the condition of the land, if they consider that the lands present condition adversely affects the amenities of the area.

Part III of the Environmental Protection Act 1990 enables local authorities to take action if an accumulation or deposit is considered to be prejudicial to health or a nuisance.

Section 92 of the Civic Government (Scotland) Act 1982 creates an offence of leaving litter in areas such as common back courts and common passageways.

Section 95 of the Civic Government (Scotland) Act 1982 enables local authorities to require the owner of an open space in a populous space and set apart for use by the owners or occupiers of two or more separate properties, such as back court areas, to maintain the open space and any boundary walls or fences so as to prevent danger or nuisance to the public. The owner of the open space shall be entitled to recover an equal portion of the expense from each person entitled to use the open space for any work carried out in complying with the notice.

Appendix 3

Cleanliness Monitoring Systems

Detailed below are various monitoring systems used to monitor the quality of local environments.

Local Environmental Audit and Management System (LEAMS)

The LEAMS process is structured so that all authorities carry out exactly the same monitoring programme to enable full comparison between the results obtained.

The first part of the process is training. Each local authority in the LEAMS process is fully briefed on the LEAMS process, the relevant legislation about street cleansing and litter, the survey methodology, and how to use the data obtained during the survey.

Following the training, each local authority carries out bi-monthly surveys within their area. These surveys cover a random minimum sample of 2% of the streets and other relevant sites within their area. The following criteria is assessed during each of the surveys:

Cleanliness grade

Litter Bins (Count of Bins and Count of Overflowing Bins)

Types of litter

Sources of litter

Adverse Environmental Quality Indicators, such as dog fouling, graffiti or weed growth

Any other comments that may be useful for the site.

A data summary sheet is completed following each of the surveys to keep a record of the survey findings.

Every six months each local authority carries out a minimum 2% sample survey within another local authority area. This process allows for independent audits to be carried out and allows an exchange of information and best practice to take place.

An annual validation survey is carried out by Keep Scotland Beautiful, also assessing a minimum 2% sample survey within each of the local authority areas. This provides the external, independent evaluation recommended under Best Value.

Cleanliness Index Monitoring System (CIMS)

The Cleanliness Index Monitoring System (CIMS) is a more intensive version of LEAMS which involves looking at a minimum of 10% of the sites in each land use category and geographical area to provide a fully representative sample.

CIMS offers an external street cleansing validation service that applies standard monitoring techniques, allowing comparisons to be made between local authorities. The CIMS package includes training in parts II and IV of the Environmental Protection Act 1990 for both client and contractor staff and the use of the monitoring methodology.

Validation surveys are conducted at least once a year and are undertaken by Keep Scotland Beautiful trained officers. Each survey produces practical information to encourage co-operation between different sectors and departments of an authority.

Detailed Independent Surveys

Based on the CIMS monitoring methodology, more detailed surveys of local authority or specific problem areas can be conducted to give more in-depth data into local problems. For example, detailed surveys of ward areas or industrial estate land.

Appendix 4

Public Attitudes to the Environment in Scotland 2002

The Survey of Public Attitudes to the Environment in Scotland was commissioned by the Scottish Executive, in conjunction with Scottish Natural Heritage and the Forestry Commission to provide information on public views on a wide range of environmental issues. A representative sample of 4,119 people throughout Scotland was surveyed between February and June 2002.

The following information shows the views in relation to litter and dog fouling:

The survey found that nine in ten people (89%) thought that litter was quite a big or a very big problem in Scotland and only 2% thought that it was not a problem at all. Seven in ten people felt that litter had become more of a problem in Scotland over the last five years (69%). Similarly, eight in ten people (79%) thought that dog fouling was either quite or a very big problem in Scotland and just 4% thought that it was not a problem at all. In addition, half of all people asked felt that dog fouling had become more of a problem than five years ago, although 14% thought the problem had lessened.

Concern for both issues was strongly age related. Two thirds of people aged over 65 felt that litter was a problem and nearly eight in ten people in the same age group said they felt it had got noticeably worse over the last five years. Very similar proportions of people aged between 45 and 64 thought the same. In contrast, far fewer people aged between 16 and 24 years perceived litter to be a very serious problem. Those in this group were also less likely to say that they had noticed it getting worse over the last five years.

Although there was no significant difference in opinion over the size of the litter problem between owner occupiers and renters, those living in accessible small towns or one of the large urban areas were more likely to think litter was a very big problem, compared with those from remote rural areas or towns (over 6 in 10, and 4 in 10 people respectively).

As Figure 2.4 shows, people who lived in social rented accommodation were more concerned about dog fouling than owner occupiers. Just under five in ten owner occupiers (49%) felt that this problem had got worse over the last five years, but six in ten social renters (60%) thought the same. A third (34%) of people from remote rural areas said dog fouling was a very big

problem compared with over half of those from the large urban areas (49%). People from remote rural areas were also less likely to think that dog fouling had become more of a problem during the last five years (40%) than those from the large urban areas (48%).

A final point to note is that only a third of dog owners felt that dog fouling was a very big problem in Scotland compared with over half of those people who did not own dogs. While 51% of non-dog owners thought dog fouling had got worse over the last five years only 45% of dog owners took this view. [Tables 2.23 to 2.26]

Table 2.23 The size of the litter problem in Scotland by socio-demographic characteristics

		Very big problem	Quite a big problem	A small problem	Not a problem at all	Don't know	Sample size
All respondents	%	57	32	8	2	1	2,130
Men	%	57	31	10	2	1	899
Women	%	57	34	6	2	1	1,231
Aged 16 – 24	%	46	45	5	4	0	177
Aged 25 – 44	%	49	38	12	1	1	724
Aged 45 – 64	%	66	26	6	2	1	642
Aged 65+	%	67	22	7	3	1	587
Owner occupiers	%	57	34	7	2	0	1,322
Private renters	%	44	40	12	5	1	146
Social renters	%	61	27	8	3	1	625
Large urban areas	%	61	27	8	3	1	727
Other urban	%	53	35	10	2	1	506
Accessible small towns	%	65	30	4	1	-	185
Remote small towns	%	40	44	13	1	1	145
Accessible rural areas	%	56	36	6	2	0	387
Remote rural areas	%	44	43	9	3	2	180

Table 2.24 Perceptions of change in litter problem in last five years by sociodemographic characteristics

		More of a problem	No change	Less of a problem	Don't know	Sample size
All respondents	%	69	23	5	3	2,130
Men	%	69	23	5	3	899
Women	%	70	23	5	3	1,231
Aged 16 – 24	%	64	27	4	5	177
Aged 25 – 44	%	61	29	7	3	724
Aged 45 – 64	%	76	18	4	2	642
Aged 65+	%	78	17	2	3	587
Owner occupiers	%	71	22	6	2	1,322
Private renters	%	56	34	3	8	146
Social renters	%	70	23	4	4	625
Large urban areas	%	67	24	5	4	727
Other urban	%	71	21	5	3	506
Accessible small towns	%	73	23	3	1	185
Remote small towns	%	71	22	4	3	145
Accessible rural areas	%	71	22	6	2	387
Remote rural areas	%	59	29	4	9	180

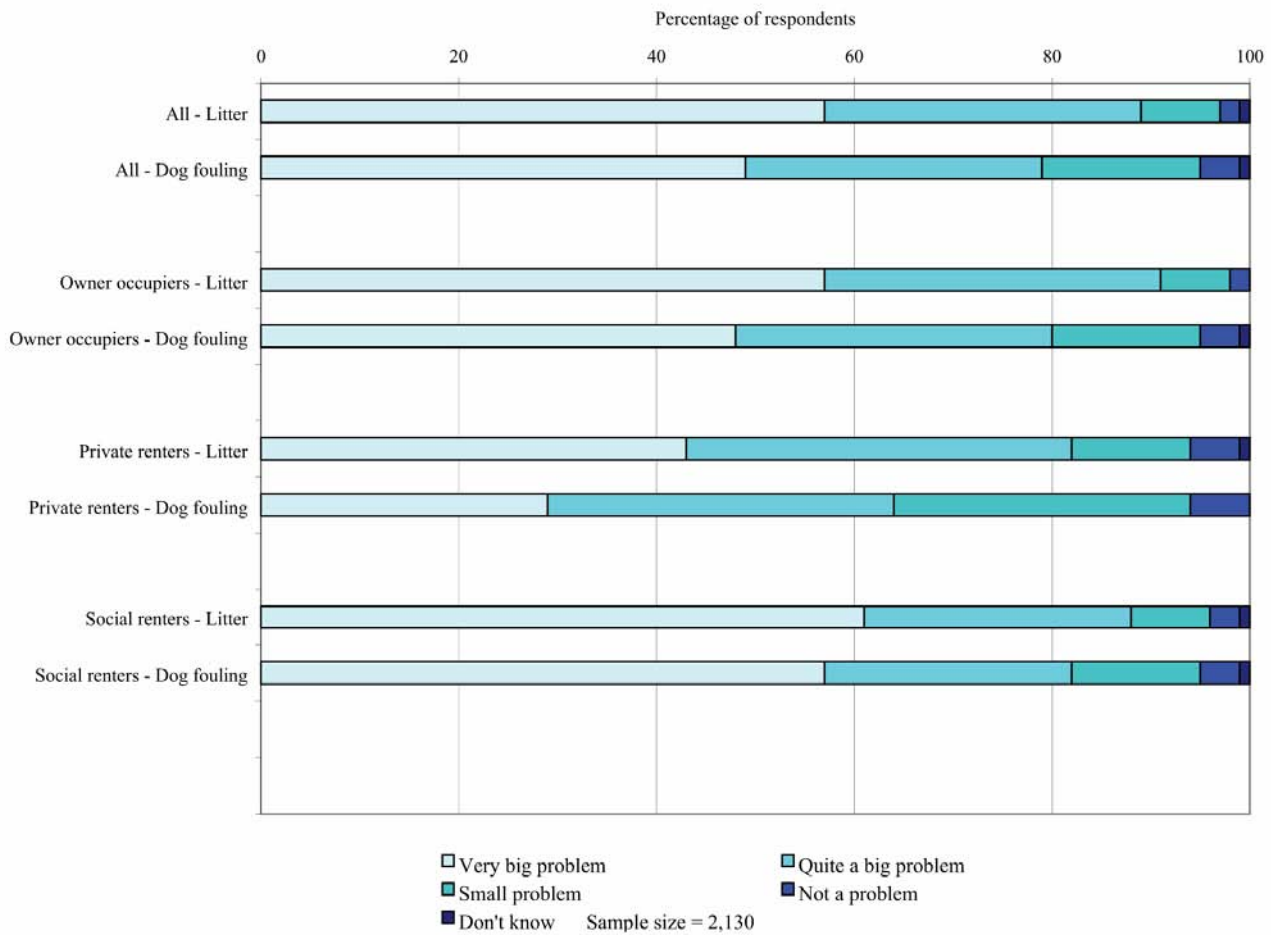
Table 2.25 The size of the dog fouling problem in Scotland by socio-demographic characteristics

		Very big problem	Quite a big problem	A small problem	Not a problem at all	Don't know	Sample size
All respondents	%	49	30	16	4	1	2,130
Men	%	45	30	20	5	2	899
Women	%	52	31	12	4	1	1,231
Aged 16 – 24	%	31	35	26	6	2	177
Aged 25 – 44	%	46	33	18	3	1	724
Aged 45 – 64	%	54	29	12	4	1	642
Aged 65+	%	58	23	11	6	2	587
Owner occupiers	%	48	32	15	4	1	1,322
Private renters	%	29	35	30	6	1	146
Social renters	%	57	25	13	4	1	625
Large urban areas	%	49	26	18	5	2	727
Other urban	%	49	32	15	4	0	506
Accessible small towns	%	54	29	15	2	-	185
Remote small towns	%	45	41	9	4	1	145
Accessible rural areas	%	51	32	13	4	1	387
Remote rural areas	%	34	42	13	5	7	180
Dog owners	%	37	37	20	6	1	449
Non-dog owners	%	52	28	15	4	1	1,675

Table 2.26 Whether dog fouling has got worse in last five years by sociodemographic characteristics

		More of a problem	No change	Less of a problem	Don't know	Sample size
All respondents	%	50	32	14	4	2,130
Men	%	47	34	14	5	899
Women	%	52	30	14	4	1,231
Aged 16 – 24	%	37	42	14	7	177
Aged 25 – 44	%	48	32	15	5	724
Aged 45 – 64	%	54	29	14	3	642
Aged 65+	%	56	29	11	4	587
Owner occupiers	%	49	33	16	3	1,322
Private renters	%	29	38	17	16	146
Social renters	%	60	28	8	4	625
Large urban areas	%	48	33	15	5	727
Other urban	%	50	31	15	4	506
Accessible small towns	%	54	31	14	2	185
Remote small towns	%	57	26	11	6	145
Accessible rural areas	%	54	31	12	3	387
Remote rural areas	%	40	41	9	10	180
Dog owners	%	45	36	14	5	449
Non-dog owners	%	51	31	14	4	1,675

Figure 2.4 Size of litter and dog fouling problems in Scotland by tenure type



The survey also considered ways in which problems of litter and dog fouling might be addressed. Littering is an offence which can attract on-the-spot fines. Currently local authority officers have the power to issue notices asking for payment of such fines. On commencement of the Antisocial Behaviour etc (Scotland) Act 2004 police officers will also enjoy this power. Local authorities have a duty to ensure their areas stay free of litter, through means such as Street Litter Control Notices, as well as a duty of litter clearance. The 2004 Act, when commenced, will give the Scottish ministers power to direct local authorities (and others) in the performance of this duty. The Dog Fouling (Scotland) Act 2003 came into effect on 22 October 2003 and allows local authorities to issue fixed penalty notices to those who fail to clean up after their dog has fouled in a public place.

Over seven in ten people said that enforcing fines for people that drop litter was a good way of reducing litter (72%). A similar proportion said that educating children in school more about litter could reduce the problem (71%). As Table 2.27 shows, there was no significant difference between those households with children and those without in support for this method. Over half (58%) were in favour of making fast food outlets responsible for their own

litter and 50% thought that providing more litter bins would reduce the problem.

Fines were also seen as the best way of reducing the problem of dog fouling, considered likely to reduce the problem by 73% of those surveyed (Table 2.28). Half the respondents thought dog fouling would be reduced by more bins for dog fouling (53%), educating dog owners on the problems of dog fouling (51%) and providing special areas for dog walking (47%).

Dog owning households often held different views to non-dog owning houses. Fines were less popular with them (60% said this would be a good method compared to 77% of non-dog owners). Instead, they were more supportive of providing more bins (61%) and education for dog owners (57%).

Table 2.27 Ways of reducing litter by whether household has children

	Households with children	Households without children	All respondents
	<i>Percentage supporting each measure*</i>		
Enforcing fines for those who drop litter	73	72	72
Educating children in school about litter	73	70	71
Making fast food outlets responsible for their own litter	59	57	58
Providing more bins	54	49	50
Employing (more) people to clean up litter	39	38	38
Litter wardens	28	32	31
Sample size	616	1,514	2,130

* Respondents could select as many answers as they wished.

* Respondents could select as many answers as they wished.

Table 2.28 Ways of reducing dog fouling by whether household has a dog

	Dog-owning households	Non dog-owning households	All respondents
	<i>Percentage supporting each measure*</i>		
Enforcing fines for people allowing dog fouling	60	77	73
Providing more bins for dog fouling	61	52	53
Educate dog owners on the problems of dog fouling	57	50	51
Provide special areas for dog walking	46	47	47
Employ dog wardens	27	31	30
Sample size	449	1,675	2,130

Appendix 5

Summary Proceedings by Persons Aggrieved by Litter Offences By Local Authorities and Others

The text of the legislation below has been edited to reflect its application in Scotland.

Section 91 Environmental Protection Act 1990 (Amended by Section 57(3) of the Antisocial Behaviour etc. (Scotland) Act 2004)

- (1) The sheriff may act under this section on a summary application made by any person on the ground that he is aggrieved by the defacement, by litter or refuse of:-
 - (a) any relevant road;
 - (b) any trunk road, which is a special road;
 - (c) any relevant land of a principal litter authority;
 - (d) any relevant Crown land;
 - (e) and relevant land of a designated statutory undertaker;
 - (f) any relevant land of a designated educational institution; or
 - (g) any relevant land within a litter control area of a local authority.
- (2) The sheriff may also act on the summary application of a person aggrieved by the want of cleanliness of any road or any trunk road that is a special road.
- (3) A principal litter authority shall not be treated as the aggrieved person for the purposes of proceedings under this section.
- (4) Proceedings under this section shall be brought against the person who has the duty to keep the land clear under section 89(1) above or to keep the road clean under section 89(2) above, as the case may be.
- (5) Before instituting the proceedings under this section against any person, the applicant shall give to the person not less than five days written notice of his intention to make the summary application and the notice shall specify the matter complained of.
- (6) If the sheriff is satisfied that the road or land in question is defaced by litter or refuse, or in the case of a road, is wanting cleanliness, he may, subject to subsections (7) and (8) below, make an order (“a litter abatement order”) requiring the person to clear the litter or refuse away, or clean the road within a time specified in the order.
- (7) The sheriff will not make a litter abatement order if the person against whom the summary application is made proves that he has complied, as respects the road or land in question, with his duty under section 89(1) and (2) above.
- (8) The sheriff shall not make a litter abatement order where it appears that the matter which is the subject of the summary application is the result of directions given to the local authority under section 89(6) above by the roads authority
- (9) A person who, without reasonable excuse, fails to comply with a litter abatement order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500 in 2006) together with a further fine of an amount equal to one-

twentieth of that level (£125 in 2006) for each day on which the offence continues after the conviction.

- (10) In any proceedings for an offence under subsection (9) above it shall be a defence for the person against whom the proceedings are taken to prove that he has complied, as respects the road or land in question, with his duty under section 89(1) and (2) above.
- (11) A
- (a) direction under section 89(6A); or
 - (b) code of practice under section 89(7)
- shall be admissible in evidence in any proceedings and if any provision of such a direction or code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.
- (12) Where a sheriff is satisfied on the hearing of an application under this section—
- (a) that, when the application was made to him, the road or land in question was defaced by litter or refuse or, as the case may be, was wanting in cleanliness, and
 - (b) that there were reasonable grounds for making the application,
- the sheriff shall order the person against whom the proceedings are taken to pay such reasonable sum to the applicant as the sheriff may determine in respect of the expenses incurred by the applicant in making the application and the proceedings before the court.
- (13) In the application of this section to Scotland—
- (a) for any reference to a magistrates' court there shall be substituted a reference to the sheriff;
 - (b) for any reference to a complaint there shall be substituted a reference to a summary application, and "complainant" shall be construed accordingly;
 - (c) for any reference to the defendant there shall be substituted a reference to the person against whom the proceedings are taken;
 - (d) for any reference to a highway and a relevant highway there shall be substituted a reference to a road and a relevant road; and
 - (e) for any reference to a highway authority there shall be substituted a reference to a roads authority,
- and any person against whom proceedings are brought may appeal on a point of law to the Court of Session against the making of a litter abatement order.

Appendix 6

NOTICE OF OPPORTUNITY TO PAY FIXED PENALTY
Environmental Protection Act 1990, section 88

Alleged offender:

Address;

I, [3], an authorised officer/a constable (delete as necessary) of [4] have reason to believe that on [5] you committed an offence of leaving litter, under section 87 of the Environmental Protection Act 1990, in the area of [6]. This notice offers you the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty. The circumstances alleged to constitute the offence are as follows:

No proceedings will be taken for this offence before the expiration of fourteen days following the date of this notice. You will not be liable to conviction for the offence if you pay the fixed penalty during that period of fourteen days.

The amount of the fixed penalty is [7]. It may be paid to [8] at the following address. [9].

Payment may be made by pre-paying and posting to [10] at [11] a letter containing the amount of the penalty. Payment may be in cash, or by a cheque, postal order or money order made payable to [12]. (If you are sending cash you are advised to send it by registered post). Payment made in this way will be regarded as having been made at the time at which the letter would be delivered in the ordinary course of post. Alternatively payment may be made in person or by any other method.

Signature of authorised officer/or constable.

Date.

Letter which may be used for payment by post

I enclose with this letter the amount of , being the fixed penalty for an offence of leaving litter under section 87 of the Environmental Protection Act 1990.

Signature

Name in capitals Date

Notes:

[3] Insert name of authorised officer or constable.

[4] Insert name of litter authority or police force.

[5] Insert date on which offence is alleged to have been committed.

[6] Insert name of area of litter authority or place where the offence is alleged to have been committed.

[7] Insert amount of £50 or any different amount for the time being specified by the Scottish Ministers under section 88(7) of the Environmental Protection Act 1990.

[8] Insert title or name of the person to whom the fixed penalty is to be paid.

[9] Insert address at which payment is to be made.

[10] Insert title or name of the person to whom the fixed penalty is to be paid.

[11] Insert address at which payment is to be made.

[12] Insert title or name of the person to whom the fixed penalty is to be paid.

Appendix 7

Examples for use of Section 88 Fixed Penalty Notice

Please note that the following list is not exhaustive but shows a range of examples to clarify the types of situations where the use of section 88 is appropriate.

Suitable situations	Unsuitable situations
General litter items, such as drinks containers, confectionery packaging, etc	Overflowing and inadequately contained commercial waste
Chewing gum	Flytipping
Fast food packaging	Dog fouling
Elastic bands	Flyposting
General littering from vehicles	Excess household waste or side refuse
Advertising leaflets and cards	Escaped waste from waste management transport operations
Bus tickets	
Bank slips	
Betting slips	

Appendix 8

Example Standard Warning Letter for Youth Littering Offences

Our Ref:

Your Ref:

Date

Parent or Guardian of [NAME]
[ADDRESS]

Dear Sir / Madam,

ENVIRONMENTAL PROTECTION ACT 1990 Section 87 - The Offence of Leaving Litter

I write to advise you that at [TIME], [PLACE] your son / daughter / ward, [NAME] was witnessed dropping litter by officers of [COUNCIL]. As the parent or guardian, I have to inform you that [NAME] received a verbal warning from the officers at the time of the offence.

The offence of leaving litter is usually subject to a fixed penalty fine of £50 or a maximum fine of £2,500 if the case is referred to the Sheriff Court.

The issue of littering is one which the community expect the local authority to take action on. [COUNCIL] have an ongoing programme of information and awareness raising on this issue and we hope we have your support in our fight to improve the quality of your local environment.

Thank you for your co-operation in this matter.

Yours faithfully

[NAME]
[DESIGNATION]

Appendix 9

Section 93 and 94 – Street Litter Control Notices

A principal litter authority may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices ('street litter control notices') imposing requirements on occupiers of premises in relation to such litter or refuse. If the authority is satisfied, in respect of any premises which are of a description prescribed under section 94 and have a frontage on a street in their area, that:

- there is recurrent defacement by litter or refuse of any land, being part of the street or open land adjacent to the street, which is in the vicinity of the premises
- the condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter or refuse
- there is produced, as a result of the activities carried out on the premises, quantities of litter or refuse of such nature and in such amounts as are likely to cause the defacement of any part of the street, which is in the vicinity of the premises,

the authority may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.

Notices must specify appropriate and reasonable requirements in relation to the area of open land which adjoins the vicinity of the frontage of the premises on the street – the 'specified area'. Notices can include clearing away litter and provision or emptying of litter bins. The owner cannot be required to clear litter or refuse from any carriageway unless it is closed to all vehicular traffic.

A person on whom a notice is served may appeal against the notice to the court by way of summary application, within 21 days of the notice being served. If it appears to the authority that a person has failed or is failing to comply with any requirement imposed by a notice, the authority may apply to the Sheriff by way of summary application for an order requiring the person to comply with the requirement within such time as may be specified in the order. If a person fails to comply with an order, without reasonable excuse, they shall be guilty of an offence and liable to summary conviction to a fine not exceeding level 4 on the standard scale – which is currently £2,500 as at 2006.

Types of land which a street litter control notice may be served on include:

- up to 10 metres from an automated teller machine
- up to 100 metres away from various premises as described in the Street Litter Control Notices Order 1991, as amended in 1997. These include betting offices and shops, premises where lottery tickets are sold, premises where goods are displayed adjacent to or in front of the premises, fast food premises.

STATUTORY INSTRUMENTS

1991 No. 1324

ENVIRONMENTAL PROTECTION

The Street Litter Control Notices Order 1991

Made	5 th June 1991
Laid before Parliament	10 th June 1991
Coming into force	1 st July 1991

The secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, in exercise of the powers conferred on them by section 94(1)(a) and (b) and (2) of the Environmental Protection Act 1990(a), and of all other powers enabling them in that behalf, hereby make the following Order:-

Citation and commencement

1. This Order may be cited as the Street Litter Control Notices Order 1991 and shall come into force on 1st July 1991.

Prescribed commercial and retail premises

2. A street litter control notice may be issued in respect of commercial and retail premises of the following descriptions –
- Premises used wholly or partly for the sale of food or drink for consumption off the premises,
 - Premises used wholly or partly for the sale of food or drink on a part of the premises forming open land adjacent to the street,
 - Service stations and other premises on which fuel for motor vehicles is sold to the public,
 - Premises used wholly or partly as a cinema, theatre, concert hall, bingo hall, casino, dance hall, swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, or as an amusement arcade or centre, or
 - Banks, building society offices or other premises with automated teller machines located on an outside wall of the premises.

Prescribed descriptions of land

3.- (1) Land which may be included in an area of open land specified in a street litter control notice is land which is part of the premises in respect of which the notice is issued and, subject to paragraph (2) below, land of the following descriptions –

- land which is part of a street, other than a carriageway when it is open to vehicular traffic,
 - relevant land of a principal litter authority, and
 - land under the direct control of any other local authority.
- 2) The land described in paragraph (1)(i) to (iii) may be specified-

- a) In a street litter control notice issued in respect of premises described in article 2(e) above if the land is within 10 metres of those premises,
- b) In a street litter control notice in respect of any other premises, if the land is within 100 metres of the premises.

5th June 1991

Michael Heseltine
Secretary of State for the Environment

5th June 1991

David Hunt
Secretary of State for Wales

5th June 1991

James Douglas-Hamilton
Parliamentary Under Secretary of State, Scottish Office

EXPLANATORY NOTE

(This is not part of the Order)

This Order, which applies throughout Great Britain, makes provision in respect of the control of litter on streets. Article 2 prescribes the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued by a principal litter authority. Article 3 prescribes the descriptions of open land which may be specified in the notice.

STATUTORY INSTRUMENTS

1997 No. 632

ENVIRONMENTAL PROTECTION

The Street Litter Control Notices (Amendment) Order 1997

Made	5 th March 1997
Laid before Parliament	7 th March 1997
Coming into force	28 th March 1997

The Secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, in exercise of the powers conferred on them by section 94(1)(a) and (2) of the Environmental Protection Act 1990(a), and of all other powers enabling them in that behalf, hereby make the following Order:-

Citation and commencement

1. This Order may be cited as the Street Litter Control Notices (Amendment) Order 1997 and shall come into force on 28th March 1997.

Amendment of the Street Litter Control Notices Order 1991

2. Article 2 of the Street Litter Control Notices Order 1991(b) shall be amended by the omission of “or” at the end of article 2(d) and the insertion after article 2(e) of:-

- “(f) premises in respect of which there is for the time being in force a betting office licence granted under Schedule 1 to the Betting, Gaming and Lotteries Act 1963(c),
(f) premises used wholly or partly for the sale of tickets or chances in any lottery, or
(g) premises used wholly or partly for the sale of goods of any description which are displayed on open land adjacent to the street, or on the street.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes further descriptions of commercial or retail premises in respect of which a street litter control notice may be issued by a principal litter authority under section 93 of the Environmental Protection Act 1990.

**NOTICE of intention to serve a
street litter control notice**

ISSUED BY (name) Council

ENVIRONMENTAL PROTECTION ACT 1990
PART IV SECTION 94(6)

To: (name) of (address)

1 **Notice**

(name)..... Council (the Council”) as the principal litter authority **GIVES YOU NOTICE** pursuant to the Environmental Protection Act 1990 Section 94(6) that it proposes to serve a street litter control notice upon you.

2 **What to do if you object**

If you would like to make any representations with regard to the above proposed notice, you have 21 days from the date on which this notice is served upon you to do so.

Dated (date)

(signature of proper officer of authority)

STREET LITTER CONTROL NOTICE

To

Address

The (here insert the name of council)
("the Council") as the principal litter authority, is satisfied in respect of the premises as:

KNOWN AS: and (the street)("the premises") which have a frontage to the street known as:

("the street") that

[there is recurrent defacement by [litter][refuse][of land being part of the street][open land adjacent to the street] which is in the vicinity of the premises.]

[The condition of part of the premises which is open land in the vicinity of the frontage is detrimental to the amenities of the locality by reason of the premises of [litter][refuse]]

[There are produced as a result of activities carried on the premises, quantities of [litter][refuse] of such nature and in such amounts as are likely to cause defacement of any part of [the street][open land adjacent to the street] which is in the vicinity of the premises.]

[The open land referred to above is (here describe the open land)

[shown edged red on the plan accompanying this notice]

which [adjoins][is in the vicinity of] the frontage of the premises on the street]

The council therefore **Gives You Notice** that it requires you to comply with the following requirements;-

To [provide][comply] the following for [litter][refuse]-

Within a period of from the date of service of this notice on you to
(*here specify any other requirements*)

[and afterwards to do the same at the following times on intervals, namely
(*here itemise further requirements as considered necessary*)

You have the right of appeal against this notice to the Sheriff, who may, on hearing your appeal, quash this notice, or quash, vary or add to any requirement imposed by this notice.

If you fail to comply with any requirement of this notice the Council may apply to the Sheriff for an order requiring you to comply. If you fail, without reasonable excuse, to comply with the Sheriff's order, you will be guilty of an offence and liable on conviction to a fine not exceeding level 4 on the standard scale.

Dated

Signed.....

Designation.....

Please address any communication to:
(Here show name and address of relevant officer)

The following are notes only and should not be included on the above notice

The font and format may differ; the Council logo may be added. The words used in the notice should not be altered as they comply with the wording in the section.

Fine level currently (as at 2006) at £2,500

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