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Subject: Code of Practice on litter - response times are invalid

Summary

Section 9.4 of [DEFRA's Code of Practice on Litter and Refuse](#) (COPOL) and the associated last resort response times, in effect, offer duty bodies a debased standard of compliance with their Environmental Protection Act 1990 Section 89(1) duty.

Highways England fully exploit this by characterizing their duties in terms of complying with the COPOL response times and not EPA S89.

Section 9.5 of COPOL blatantly contradicts the provisions of Section 91(5) of the EPA.

DEFRA have therefore acted in breach of its duty under EPA S89(7).

Relevant sections of the EPA and COPOL

EPA

S89 (1): Under this section bodies including local authorities and Highways England have a duty in respect to the land and highways for which they are responsible **to ensure that they are, so far as it practicable, kept clear of litter and refuse.**

S 89 (7): The Secretary of State shall prepare and issue a code of practice for the purpose of providing practical guidance on the discharge of the duties imposed by subsections S89 (1) and (2).

S 91: *Summary proceedings by persons aggrieved by litter* (5): Before instituting proceedings under this section against any person, the complainant shall give to the person not less than **five days** written notice of his intention to make the complaint and the notice shall specify the matter complained of.

COPOL

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

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

9.5: Duty bodies that allow their land to fall below acceptable standards for longer than the allowed response time may be subject to a Litter Abatement Order (section 91) issued under the Environmental Protection Act 1990.

The tables immediately below 9.5 shows the allowed response times for "trunk road lay-bys" and "motorway verges" as "14 days" and "28 days or as soon as reasonably possible" respectively. See page 21 and 23.

COPOL 9.4 in effect offers duty bodies a debased standard of compliance with Section 89(1) &(2) of the EPA.

In order “to ensure that the land is, so far as it practicable, kept clear of litter and refuse” (EPA S89(1)) it follows that it needs to be cleaned on a regular, i.e. “scheduled” (COPOL 9.1), basis and, where appropriate, inspected between routine cleansings to ensure that one-off incidents are dealt with promptly.

COPOL 9.4 however offers a debased standard based on “last resort” response times. **Surely if “acceptable standards of litter and refuse are not met” then the appropriate guidance should be to remind the body in question that they are in breach of their statutory duty and that they should immediately apply additional resources to ensure that they are met in the future.**

As an example, let’s consider a busy trunk road lay-by. To comply with their statutory duty, it might make sense for the relevant duty body to attend to it on a daily basis. Because lay-bys offer safe parking this would not present any issues of practicability.

However, the COPOL response time for a lay-by is 14 days (see page 21 and 23). A duty body could, if they chose to do so, comply with this by cleaning it once a week or even once a fortnight as the land would always be brought back to the required standard within 14 days.

Complying with the last resort response time therefore does not ensure the highway is “kept clear of litter, so far as it practicable”.

Highways England characterize their duties in terms of complying with the COPOL response times and not EPA S89

The following statements speak for themselves:

“Highways England have confirmed that any restoration measures are required to take place within the timescales set out in the Code of Practice on Litter and Refuse” - 25th June 2020 - Rachel Maclean MP, Parliamentary Under-Secretary at the Department for Transport in a [written parliamentary answer](#) to Andrew Gwynne MP in reference to litter on the M67.

“... we arrange to clear the litter within the timescales required by the Code of Practice” - 15th June 2020 – Nick Harris, HE Operations Director in [a letter](#) to Barbara Keeley MP.

“The litter at this location was graded on 18 November and this information was passed to our contractors Ringway, to arrange for this area to be picked within 28 days” - 6th December 2019 - Leanne Morphew Administrator, Business Services Team East Highways England in [an e-mail to a complainant](#).

“Our service provider inspect the network weekly and should be programming in clearance works in accordance with the DEFRA Code of Practice” - July 2017 Wayne Moore SE Customer Network Manager Operations & Stewardship Highways England in [an email to another complainant](#).

None of the source documents refer to a duty to keep the highway clear of litter. [Other examples can be seen here](#)

Section 9.5 of COPOL contradicts and undermines the provisions of Section 91(5) of the EPA

The Act does not provide for any variation of the S91(5) 5 days’ notice period. Parliament presumably felt, correctly in my view, that 5 days was sufficient time for any land that had become defaced by litter to be cleared – even the central reservation of a motorway.

COPOL 9.5 therefore contradicts EPA S91(5). This is not only a source of confusion for the courts, for EPA S89 duty bodies and for members of the public considering an action under S91 but also shows a seemingly blatant disregard of the will of Parliament by DEFRA.

Do you accept these points?

Kind regards

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