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Litter Law

England and Wales



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Main findings

Recent government action has placed tackling litter and the broader notion of ‘waste crime’ firmly on the agenda with the adoption of the 2018 report, *A Green Future: Our 25 Year Plan to Improve the Environment*.¹ Expanding upon the 2017 *Litter Strategy for England*,² the 25 Year Plan sets out a comprehensive approach to reducing litter and waste crime. Some of the actions identified include creating effective national campaigns and education tools, strengthening enforcement powers for current legislation, and implementing ways to motivate businesses to develop new biodegradable technologies and to eliminate single-use plastics. The topic of litter raises many legal issues, including whether littering should be characterised and penalised as a criminal act, who should have the responsibility to clear litter, how to enforce clearance obligations, and who should pay for litter removal. There are, in addition, many non-legal dimensions, including how best to change behavioural attitudes of those who believe that littering is acceptable. Recent government waste and litter initiatives are, therefore, certainly to be welcomed and the comprehensiveness of the 2017 Litter Strategy breaks with the more piecemeal approach adopted to date.

In analysing the current state of litter law in England and Wales the first observation is that the law is difficult to locate. The ad hoc nature in which littering has been addressed over the years has resulted in complexity. There is also a lack of clarity around roles and responsibilities of different stakeholders, and, at times, a distinct lack of ‘joined-up’ thinking.

Most litter is found on land (as opposed to ‘in water’), and the obligations to clear such ‘land litter’ are well-established, with most duties falling to the landowner. However, an increasing problem with this approach is the difficulty of establishing ownership over a particular piece of land. If ownership cannot be established, the associated responsibility to clear litter cannot be enforced. As a consequence, small patches of land or even large areas remain in a state of limbo, possibly for decades, as litter accumulates and creates an eyesore. Unfortunately, new measures to tackle this problem appear to have had limited impact to date. These measures were introduced in 2017 and were designed to bring litter-related clearance duties into a broader strategy around tackling anti-social behaviour. Unfortunately, local authorities appear not to have used these new enforcement powers to clear litter, partly due to the high legal costs associated with using such powers.

One of the main tools used to address the UK’s litter problem is the criminalisation of littering. However, the main elements of the criminal offence are not as straightforward as the public might expect. Confusion surrounds the issue of ‘where’ an item is dropped, the ‘intent’ with which an item is dropped and ‘how much’ is dropped. Clarity in the criminal law is important, because if prosecuted in court a litterer could face a fine of up to £2,500. Few prosecutions, however, actually occur in practice. The more common response to littering is the issuance of a fixed penalty notice (FPN), which involves a much smaller, but still not inconsequential, fine of up to £150. Payment of the FPN serves to discharge any liability to criminal conviction. However, despite clear guidance by the Department for the Environment, Food and Rural Affairs (DEFRA)³ on the circumstances when such FPNs should be used, the media is replete with stories of FPNs issued in ways that contravene those guidelines. Another notable problem with FPNs is the perennial ‘postcode’ lottery of enforcement, with some local authorities issuing thousands each year and others relatively few.

New enforcement powers attempt to reduce the incidence of litter dropped from vehicles, with the imposition of a civil penalty charge against the registered keeper of the vehicle. This development helps to close a loophole in the current enforcement framework in relation to vehicle-based littering as it allows for action to be taken on occasions when the criminal standard of proof cannot be satisfied against a particular person in the vehicle. This new power to address vehicle-based littering is, therefore, undoubtedly welcome, because if used



it will help reduce what is often quite an anonymous type of littering. All in all, though, the range of mechanisms for enforcing littering offences appears to be rather comprehensive.

Where there does seem to be a problem of enforcement, however, is in the duty of litter clearance. A large number of public bodies have duties to clear litter from land. Local authorities have the principal responsibility to clear litter from public land, including beaches and some roads. Highways England has the responsibility to clear litter on major roads, and other bodies have similar duties for the land that they occupy, such as train companies for railway stations, and the relevant Parks Authority for parks. The research highlighted a need for greater coordination between local authorities and Highways England in order to reduce delays in the clearance of litter from roads. The cause of delay in such cases being due to the need for road closures. We also found that it can be difficult to identify the owner of land or watercourses, and particularly whether land was public or privately owned, which causes problems for imposing and enforcing obligations of litter clearance.

There is no designated statutory body responsible for clearing aquatic litter, namely in rivers and estuaries – with an exception being in the event of flooding. Instead, the obligation to clear litter in rivers and other watercourses is assumed by the Environment Agency to rest with the riparian landowner - presuming that such a landowner is identifiable. Few riparian landowners, however, appear to be aware of this potential additional legal obligation, which can also impose a heavy financial burden in having to pay to have the litter cleared. Such an approach also assumes that the litter originated from the riparian owner's adjacent land, even though litter often floats downstream far from where it was deposited.

There is also no designated statutory body with responsibility for clearing litter from the marine environment around the UK. With marine pollution by plastics reaching a crisis point,⁴ this lack of regulatory oversight is a cause for concern. Such a statutory body could follow the example of Wales, which has created a Litter Action Plan⁵ for its own marine environment, particularly in terms of undertaking an evidence-based evaluation of the state of the seas around Wales and engaging with conservation groups to identify strategies and actions to help reduce marine litter.

In addition to legal measures, a range of non-legal approaches to dealing with littering is available, such as campaigns and mechanisms that focus on changing behaviours to challenge the continuing acceptability of littering by some members of society. The Government's *25 Year Plan to Improve the Environment* promises a new national anti-litter campaign, for example, and seeks to develop a culture that teaches young people (in particular) not to litter.⁶ Such campaigns, together with business-led Codes of Practice and the use of volunteer litter pickers, are increasingly relied upon to help combat littering and its effects on society.

The true scale of voluntary litter pickers in England and Wales remains unknown. We found that a high number of dedicated individuals and groups cleared litter from the local rivers and paths, for example, and from children's play areas and green spaces. In addition, many businesses are engaging with local communities to organise and fund litter picking in their local areas. One question raised by such scale of volunteerism, is whether local authorities, and other land-owners, are over-relying on such volunteers to help them meet their litter clearance duties. Reliance on volunteers was particularly observable in respect of aquatic litter, which is particularly concerning as watercourses can present a number of hazards to volunteers.

While government strategies and planning is essential, much of the action to deal with litter depends on location. We found that important drivers in dealing with litter are the willingness of the local authority to spend its very limited budget on anti-littering activities, the level of interest by local businesses in organising and funding litter campaigns and activities, and the scale of volunteerism among members of the local community to give over their time and energy to undertake litter picking.

Executive Summary

Litter is a social and environmental problem. Clearing litter costs taxpayers over £791.5 million per year.⁷ Litter defaces our communities, harms wildlife and is a drain on resources. Consequently, there is an extensive legal framework in the United Kingdom to deal with littering. However, it is not clear that the public fully understands the scope of the law and how it operates. It also remains unclear whether the law is being applied consistently and whether it provides its enforcers with a useable and proportionate framework.

Littering is a criminal offence. The criminal offence of ‘littering’ refers to items being dropped or deposited both on land or in water, whether deposited on public property or private property (i.e. regardless of who owns the land), but only in places open to the air (or, if a covered building is at issue, then that building must be open on at least one side); and the public must have access to the location, even if only with payment. There remain a number of points of confusion in the definition, including the notion of a building being ‘open to the air’. While train station platforms qualify as being ‘open to the air’, the train station building itself does not qualify if that building is entered by a closable door. These elements are important in delineating where an offence can be committed and, thus, where enforcement officers can use their powers. Furthermore, the law distinguishes between ‘litter’ and ‘fly-tipping’ based on size of item(s) being deposited, but, again, the distinction is not entirely clear. Similarly, local authorities continue to diverge somewhat in the items that they classify as ‘litter’, particularly with regard to the feeding of birds and ducks, for example, and whether bread thrown for ducks is littering. Examples from the media also suggest that the definition is not fully understood by enforcement officers, leading to injustices.

The law takes a proportionate approach to the crime of littering by imposing relatively low-level fines, known as fixed penalty notices (FPN), instead of a criminal conviction. Enforcement of littering is improved by granting the power to issue FPNs to a large range of public bodies. Since fixed penalty notices can be issued by a range of role-holders, from police officers to park wardens to enforcement officers (i.e. contractors hired to monitor litter offences), it may, however, be confusing for the public as to whether a particular person has the authority to issue a fixed penalty notice. Moreover, the level of enforcement varies substantially between local authorities, with some issuing thousands of FPNs in a year, others issuing only a handful, and some none at all. Enforcement powers also exist at the level of parish councils, but knowledge of this power seemed to be generally lacking with the consequence that an enforcement gap is created.

Legal opinion is divided on whether littering is a ‘strict liability’ offence, namely, one that can be committed irrespective of the person’s intention to commit the act. If littering is a strict liability offence, then, so far as the law is concerned, accidental littering is still a criminal offence. Guidance issued by DEFRA suggests that the criminal offence is indeed one of strict liability. DEFRA’s guidance then mitigates the effect of this approach by indicating that enforcement officers follow the policy of issuing FPNs only where intent to cause litter is shown by the individual, namely by refusing to pick up the litter once challenged by an enforcement officer. The issue is a serious one, however, because the courts can impose a fine of up to £2,500 for littering.

A new national provision in England allows civil charges to be imposed on registered keepers of vehicles from which littering offences are committed. Such persons can be subject instead to criminal prosecution where it can be proven, to the criminal standard of proof, that they were the actual offender. In the levying of civil charges against registered keepers of vehicles, it is likely that use will be made of the substantial CCTV surveillance system available on the road network – in addition to reporting mechanisms available to members of the public, using dash-cam footage as evidence for example. These powerful surveillance tools could prove to be a ‘game-changer’ for the enforcement of littering offences that are committed from vehicles.



Local authorities have a duty to consult on litter abatement. It is the duty of each county council to consult with the local authorities (including any National Park authorities) in its area and to agree on steps that each will take for the purpose of abating litter in the county. Councils are encouraged also to consult with voluntary bodies.

A number of bodies have a duty to clear litter on their lands. Section 89(1) of the Environmental Protection Act 1990 places a duty on certain bodies to ensure that the land for which they are responsible is, so far as is practicable, kept clear of litter and refuse. There are many such bodies listed, including: local authorities; the Crown Authority for Royal Parks and National Parks; Highways England (and the equivalent bodies in Wales and Scotland); train and tram operators; airports and port and harbour authorities; schools, colleges and universities. Beaches generally fall within the remit of the local authority. Consequently, responsibilities for clearance are based largely on land ownership, and, where ownership of a particular piece of land is unclear, often this will lead to delays in clearance, sometimes for many years, while ownership issues are resolved. As regards the duty to clear litter, the standard of cleanliness expected is detailed in the 2006 DEFRA Code of Practice⁸.

The obligation to clear aquatic waters is assumed by the Environment Agency to be imposed on the riparian landowner. Awareness of this potential legal obligation among riparian landowners, however, is generally low. Moreover, there is no designated statutory body with the responsibility for clearing aquatic litter, save in the event of flooding. Relying on riparian landowners to clear litter is also problematic as clearing litter from rivers can be a dangerous task, as well as an expensive one.

Highways England (and equivalent bodies in Wales and Scotland) as well as local authorities have responsibilities for clearing roads. Highways England has duties to clear the busier roads, such as motorways, and local authorities have duties to clear local, less busy roads. In practice, the demarcation between the two categories of roads is not always clear. If a local authority is to clear a busy road, however, it must clearly liaise with Highways England in order to do so, because in order to ensure the safety of litter removal agents at least one or two lanes of the road will usually have to be closed. There is, therefore, a need for coordination between the two bodies, which often causes serious delays in litter removal. While the clearance obligation is split between the two bodies, Highways England and local authorities, the ability to enforce the criminal offence of littering has not been split in the same way. Highways England has no enforcement powers, even in relation to the roads that it is obliged to keep clear. If agents of Highways England spot a litterer, therefore, they must inform the local authority, or other enforcement agents. There is, therefore, a gap in enforcement in practice, which raises the question of whether Highways England should also have enforcement powers.

Businesses (both private businesses and public sector services such as schools) have duties pertaining to the 'waste' that they produce, including the duty to prevent waste escaping from their control, namely as litter.

Individuals and councils have a number of legal actions available to help control litter. Individuals can report litter problems to their local authority, which may issue an 'abatement notice' to prevent the nuisance recurring. Alternatively, an individual can bring legal proceedings against the local authority, which may make a 'litter abatement order' to require the defendant to clear the litter. Depending on the circumstances, litter may also constitute a nuisance, whether statutory, public or private nuisance, or an action could be brought in negligence, as a public law action for judicial review, or under human rights legislation.

The local authority can issue a community protection notice (CPN) to address unreasonable, ongoing problems or nuisances (such as litter), which have a negative impact on the community's quality of life. A person who fails to comply with a CPN commits a criminal offence. In the alternative, public space protection orders (PSPO) are designed to deal with a particular nuisance or problem in a specific area by imposing conditions on use of the



area – thus, could be used to prohibit litter in a public place. Still, these two mechanisms are relatively new and it is unclear how well they are working in practice, compared to the previous mechanisms of litter clearing notices and street litter control notices.

Non-legal approaches expand the range of actions to help reduce litter. In other countries the use of deposit return schemes (for example, ‘reward and return’) has served to incentivise people to recycle as well as to decrease littering. Voluntary Codes of Practice for the fast-food sector have also encouraged businesses to take responsibility for the litter generated by their products. In addition, there are many examples of businesses organising litter picking volunteers or providing equipment for litter picking in their local areas. In Wales, the Eco-Schools initiative encourages pupils to engage with environmental and sustainable development issues, and the Welsh Government’s ‘Tidy Towns’ initiative provides funds to community groups, local authorities and to the Keep Wales Tidy scheme, so as to make areas cleaner, tidier and safer.

The scale of voluntary litter picking is unknown. Local authorities, community groups, individuals and businesses organise a large number of voluntary litter picking activities. However, voluntary litter picking can raise various health and safety issues and the government needs to improve awareness of these dangers. In addition, with reduced government funding for public services there is a question as to whether local authorities are, as a consequence, placing greater reliance on voluntary litter pickers to fulfil their legal duties.

Marine litter is an increasingly global and urgent problem. Marine litter reduces amenities, is a danger to fishing, and harms the wider natural environment. Consequently, there is a range of laws at the international level and European Union level that relates to litter in the marine environment, as well as to reducing pollution more broadly. For example, as a member of the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (the ‘OSPAR Convention’), the UK is committed ‘to substantially reduce marine litter in the OSPAR maritime area to levels where properties and quantities do not cause harm to the marine environment’. The EU established a Marine Strategy Framework in 2008 for Member States to act in the field of marine environmental policy, including in reducing marine litter. Within the European Union, funding is available from the European Maritime and Fisheries Fund to support initiatives to address litter in the marine environment. For example, in order to improve marine biodiversity, fishermen are encouraged to collect rubbish found at sea and deposit it in special containers located in ports. The Welsh Government has taken further steps to reduce marine litter by, for example, creating a Clean Seas Partnership with conservation organisations, and has adopted a Litter Action Plan for Wales (2018-2020).

The UK has no statutorily designated body with the responsibility to clear litter in marine waters. Although the Maritime and Coastguard Agency (MCA) sets the policy for the UK marine environment and may become involved in the clearing of litter on the waters, seemingly neither that body nor any other is duty-bound to do so. To ensure greater action on marine litter issues in the future, this situation needs to change.

Financial data on litter costs is inadequate. Where available, financial data on litter clearance is often recorded as an annual overall figure for street cleaning, or may be mixed with other associated costs. Consequently, it is difficult to gauge the true cost of litter clearance. County councils also lack ring-fenced funding for the specific purpose of litter removal. Instead, district and borough councils tend to set the budgets for litter removal from the total funds that they receive from the county council, and so litter clearance activities may be cut to allow for other funding priorities.

Main Recommendations

Legal and Policy Recommendations

1. Government to clarify whether littering is prima facie a criminal offence of strict liability.
2. Government to establish which organisation has responsibility for litter abatement policy, oversight and clearance obligations for the marine environment.
3. Government to undertake evidence-based assessments of litter abatement and clearance strategies for the marine environment, building on initiatives such as the Welsh Marine Litter Action Plan.
4. Law Commission or government to review litter/waste legislation with a view to consolidating the most important provisions in one instrument, or to produce comprehensive guidance in one consolidated document.
5. Government to investigate levels of litter within aquatic environments and indicate minimum standards of cleanliness in an updated DEFRA Code of Practice on Litter and Refuse.
6. County councils and local authorities to work with each other more closely on litter issues and to share best practice, ensuring that they draw in expertise from voluntary organisations.

Enforcement Recommendations

7. Government to undertake a review of the issuance of FPNs, to ensure compliance with DEFRA's guidance, thereby ensuring that the law is being correctly and uniformly applied across the country.
8. Government to monitor waste crime statistics to determine whether increased fines for littering have, in practice, deterred people from littering.
9. Government to review by 2023 whether the new CPN and PSPO powers are effective as enforcement mechanisms for litter removal.
10. Consideration by government of transferring the responsibility for the clearance of busy roads (i.e. those requiring lanes to be closed by Highways England) from councils to Highways England (and equivalent bodies in Wales and Scotland).
11. Government to review the proposal to grant Highways England the power to issue FPNs.
12. Government to review the level of enforcement of litter law by parish councils, and identify any impediments to increased levels of enforcement, such as funding or training.

Transparency

13. Government to commission studies to establish the level of reliance placed on volunteer litter picking, including analysing the extent to which volunteers are being used as a replacement for work that should be carried out by public bodies, and the extent of involvement in dangerous litter picking activities.
14. County councils and local authorities to be required to have greater transparency in their accounts by providing a detailed breakdown of costs involved in clearing litter and fly-tipped waste.



1. Introduction

1. Litter is estimated to cost the taxpayer between £717 million and £850 million annually in clear-up costs.⁹ Not only is litter unsightly and expensive to clear, litter in the street is seen by some as symptomatic of wider social problems.¹⁰ A Report in 2014-15 by the House of Commons Communities and Local Government Select Committee, entitled *Litter and Fly-Tipping in England and Wales*, observed that there tends to be higher levels of litter in areas of social deprivation and crime, such as inner city areas.¹¹ According to the Report, the dropping of litter is more common in England and Wales than in other European countries, such as Switzerland where littering is generally regarded by the public as ‘unthinkable’.¹²



2. Moving to more recent developments, 'waste crime' firmly appears to have been placed on the governmental environmental agenda with the adoption of the 2018 report, entitled, *A Green Future: Our 25 Year Plan to Improve the Environment*.¹³ Particular focus is placed on illegal waste sites and other waste crime, but smaller-scale littering is also included. Citing the *2017 Litter Strategy for England*,¹⁴ the 25 Year Plan appears to be delivering on the promises to try to reduce litter by using a range of tools, such as devising new national anti-litter campaigns, the creation of stronger enforcement powers, resourcing the creation of new education materials and initiatives, and motivating businesses to act beyond a simple non-binding code of practice. The current report analyses the state of the law on litter in England and Wales.
3. There is an extensive national legal framework in the United Kingdom to deal with littering. However, it is contended that people's understanding of the scope of the legislative framework and how it operates is only notional. Various laws have been introduced over the last 25 years but it remains unclear how consistently the law is applied and whether the law provides its enforcers with a useable and proportionate framework.
4. This report considers, among other things: what falls within the scope of 'litter' for legislative purposes, whose responsibility it is to clear litter; and what measures are available to address the problem of litter for local authorities and for other relevant bodies and individuals.
5. This report was informed by qualitative and quantitative research methodology. Qualitative data was obtained from two focus groups and from interviews with various persons: officers of parish, district and borough councils, members of voluntary organisations and concerned citizens. Freedom of information requests were made to district and borough councils across a number of counties in England. The purpose behind these requests was to answer the following questions: How many fixed penalty notices were issued for littering in the last five years, broken down annually? How many of these fines were paid? How many fixed penalty notices (FPNs) were challenged in court? How many councils (district, borough and unitary) made use of public space protection orders and/or community protection notices to tackle litter?
6. Two focus groups were set up in Essex. One group was set up in the town of Wivenhoe and the other at the University of Essex in Colchester. The first discussion topic of the groups was to determine which types of litter were regarded to be most prevalent, which individuals and/or bodies were perceived to be responsible for clearing litter and to establish whether legislation on litter is clear to members of the public. The second discussion topic for these focus groups analysed which measures were likely to be most effective in tackling litter, for example, legislative reform (including a higher fine), an increase in volunteer initiatives or other practical measures.
7. We interviewed relevant staff members of parish, district and borough councils in Essex to hear their views about litter levels in their communities, and on the effectiveness of the current law in addressing litter.



Key issues

- What items constitute 'litter'?
 - Where is it considered as 'littering'? (Private and public land, land versus water)
 - Whose responsibility is it to remove litter?
 - What are the elements of the criminal offence of littering?
 - When will a fixed penalty notice be used rather than criminal prosecution?
-

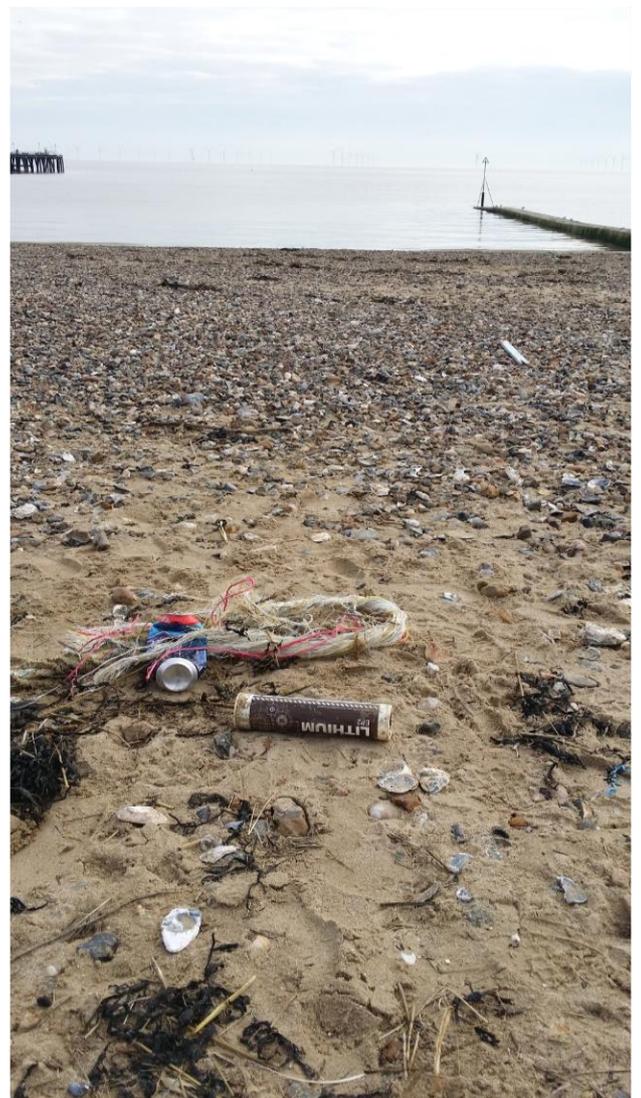
1.1 What is litter? Who is responsible for clearing litter?

Consider the following scenarios

- Supervised children below the age of 10 both drop a sausage roll. One child's sausage roll is eaten by a pigeon and the other remains on the ground.
 - A gentleman drops orange peel. A community support officer or police officer requests that he picks up the orange peel and that he places it in the nearby rubbish bin. He follows the request.
 - Cans, sweet wrappers, sanitary towels, and condoms can be found on the beach and in the nearby sea.
 - An adult sits near a plum tree where decaying plums can be found on the ground. She eats an apple and throws the apple core onto the ground.
 - Motorways have litter on the edges of the road including cans, sweet wrappers and cigarette butts.
 - Teenagers regularly chew gum and throw it onto a busy road. Some of the gum is trodden into the pavement and is hard and flat, some of it is not.
 - A business decides to post leaflets on walls. Some of the posters remain on the wall and some of them have fallen to the ground.
 - A young child picks a leaf from a tree and later drops it to the ground.
 - There is an area in town which is known to see accumulations of drug syringes and needles.
 - Rubbish from a fast-food restaurant can be seen outside the fast-food restaurant and on nearby streets.
 - A river floods and washes leaves, twigs and sweet wrappers over nearby fields and gardens.
 - The river bed is visible at low tide and can be seen to contain shopping trolleys, cans and empty plastic milk cartons.
 - Birds remove items from bins, leaving sweet wrappers, crisp packets and papers deposited over the grass.
 - Out at sea, plastic milk cartons and plastic carrier bags float in the water.
 - A family go to the park and scatter bread on the ground to feed the ducks.
-

1.2 Historical overview of litter law in England and Wales

8. Criminal offences related to littering were included in the 1958 Litter Act (which was reinforced by the (now repealed) 1967 Civic Amenities Act) and the 1971 Dangerous Litter Act. These Acts were subsequently repealed by the 1983 Litter Act, which consolidated the two earlier Acts into one piece of legislation.
9. Today the 1983 Litter Act has been supplemented by the 1990 Environmental Protection Act (EPA 1990), which contains the offence of littering and obligations for litter authorities to deal with the clearance of litter. The EPA 1990 remains the most important Act of Parliament dealing with litter (with new sections inserted by the 2005 Clean Neighbourhoods and Environment Act) together with the 2014 Anti-social Behaviour, Crime and Policing Act. It is important to observe that littering used to be a matter addressed by local bylaws, but this is no longer the case due to the enactment of the 2005 Clean Neighbourhoods and Environment Act.
10. This report provides an overview of the litter law in England and Wales, however there are some legislative differences observed between England and Wales due to the devolved administration in Wales. Consequently, the law in Wales is addressed in a separate section of the report. The law in Scotland and Northern Ireland is not covered in the report, although there are many similarities with English law on this issue.



2. Defining Litter

2.1 What is litter?

11. The definition of litter is important, as littering constitutes a criminal offence. Hence, the concept must be sufficiently clear because the consequences are serious for those prosecuted in the criminal justice system. The definition is also important in distinguishing the lesser offence of littering from the more serious offence of fly-tipping.
12. There is no comprehensive statutory definition of litter. In practice, therefore, it has been left to the courts to determine whether a particular item complained of constitutes 'litter'. From the few decided cases on this issue, it is apparent that the courts have given the concept a wide interpretation. Notably, in the 1995 case of *Westminster City Council v. Riding*,¹⁵ the High Court took an approach based on the term's natural or ordinary meaning, stating that the word 'litter' in the EPA 1990:

'should be given its natural meaning of miscellaneous rubbish left lying about. Rubbish left lying about can consist of all manner of things including domestic household waste, commercial waste, street waste and no doubt other waste not falling within such description'.¹⁶
13. This expansive definition is unsatisfactory, however, given that littering carries a criminal penalty. Returning to our earlier examples of possible items of 'litter', for instance, does the definition include bread thrown for the birds, a cigarette butt, a leaf picked from a tree and discarded on the pavement, or a large bag of rubbish?

Clearer guidance has, consequently, been provided by the Department for Environment, Food and Rural Affairs (DEFRA), which in its 2006 Code of Practice on Litter and Refuse suggests, rather more helpfully:

'Litter is best defined as something that is improperly discarded by members of the public in an area. It includes sweet wrappers, drinks containers, cigarette ends, gum, apple cores, fast food packaging, till receipts, small bags...'

'Litter is something, more often than not, synthetic, which is improperly discarded by members of the public whilst sitting, walking or travelling through an area'.¹⁷



14. Furthermore, due to the particular problems that discarded cigarettes and chewing gum cause on our roads and pavements, this was an area in which the law received an important clarification in 1990. Hence, these items were specifically stated as falling within the definition of litter, and so a littering offence is committed if these items are dropped. Thus, Section 98(5)A of the EPA 1990 clarifies that:

(5A) 'Litter' includes -

- (a) the discarded ends of cigarettes, cigars and like products, and
- (b) discarded chewing-gum and the discarded remains of other products designed for chewing.

2.2 Litter as opposed to fly-tipping

15. The law makes a distinction between littering and fly-tipping based on size. While both are criminal offences, the distinction is important since the monetary fines are greater for the offence of fly-tipping than for littering.
16. In relation to the size of items amounting to 'litter', the court in the 1995 *Westminster City Council v. Ridding*¹⁸ case decided that a 'black bin bag' containing rubbish may amount to 'litter'. However, the 2006 guidance issued in DEFRA's Code of Practice on Litter and Refuse suggests a slight change in approach, with the new stipulation that the disposal of 'a single plastic sack of rubbish' or greater should usually be considered to constitute the more serious offence of fly-tipping rather than littering.¹⁹ 'Small bags', on the other hand, DEFRA suggests can be considered as 'litter'. The line between the two offences has to be drawn somewhere, and the conclusion to be drawn from DEFRA's 2006 guidance is that the offence of fly-tipping is now to be preferred for items that would have previously been viewed as litter. However, the distinction between a sack and a small bag remains unclear.
17. While 'litter', therefore, will be given its ordinary meaning by the courts and, thus, by an enforcement officer also, the exact size of the bag or sack of rubbish or item(s) dropped could continue to cause some inconsistencies in how the law is applied. Someone leaving a bag of rubbish by the roadside, for example, could be charged with the more serious offence of fly-tipping.

2.3 Exclusions

18. There are several categories of rubbish, all of which may also be regarded as a social problem, but, nonetheless, do not fall within the legal definition of 'litter' – the definition is relevant here for litter authorities, whose role it is to clear such waste. Categories of rubbish, as distinguished from litter, include:

- Detritus** 'comprises small, broken down particles of synthetic and natural materials, including dust, mud, soil, grit, gravel, stones, rotted leaf and vegetable residues, and fragments of twigs, glass, plastic and other finely divided materials. Leaf and blossom falls are to be regarded as detritus once they have substantially lost their structure and have become mushy or fragmented'.²⁰
- Refuse** (which includes fly-tipping and may include waste from dog fouling²¹) 'Refuse should be regarded as having its ordinary meaning of waste or rubbish, including household and commercial waste, and can include fly-tipped waste'.²²
- Fly-tipping** 'comprises inappropriately disposed or dumped household, commercial or industrial waste'.²³
- Hazardous waste** Examples of hazardous waste include: asbestos, chemicals (e.g. brake fluid or print toner), batteries, solvents, pesticides, oils (except edible ones), e.g. car oil, equipment containing ozone depleting substances e.g. fridges and hazard waste containers.²⁴
- Flyposting** Posters which drop to the ground or become tatty remnants may also be regarded as litter.
- Abandoned cars**²⁵
- Abandoned shopping trolleys and luggage**²⁶

19. The separation of littering from dog fouling within the EPA 1990, as well as within the DEFRA Code of Practice, demonstrates that dog fouling is regarded as distinct from littering for the purpose of criminal and civil penalties.²⁷ However, if dog fouling is regarded as 'refuse' then it may still come under the duty of the local authorities to clear up litter and refuse under Section 89(1) of the EPA 1990.
20. In relation to cigarette ends and discarded chewing gum, the DEFRA Code of Practice states that the standards of cleanliness expected in the Code of Practice will not apply to trodden-in chewing gum, and that bodies with duties to clear litter 'are not required to employ special cleaning methods to remove compacted gum or gum staining over and above normal cleansing regimes'.²⁸
21. Sanpro waste (e.g. nappies, sanitary towels and incontinence pads) is not considered to be hazardous where it emanates from a healthy population and, thus, is considered as normal waste.
22. It is, therefore, commonly suggested²⁹ that the following items are among those that may be regarded as litter:

Household items

- Books/Magazines/Pencils
- Clothing/Shoes
- Cooking Utensils
- Disposable Nappies
- Personal Hygiene Products
- Pillows
- Small Decorative Items (candles, etc)
- Small Mirrors
- Tools
- Umbrellas
- Toys/Balls



Food-related items

- Bottle Caps/Lids
- Paper Cups/Plates/Forks/Knives/Spoons
- Drinks Containers/Beverage Bottles
- Food Wrappers/Fast Food Packaging/Containers
- Fruit Cores/Peels/Food Leftovers
- Chewing Gum/Bubble Gum
- Straws/Stirrers
- Can Openers
- Small Plastic/Paper Bags

Smoking litter

- Cigarette Butts
- Cigarette Filters
- Cigarette Packets
- Cigar Tins
- Tobacco Pouches
- Matches

Other items

- Monofilament Fishing Lines
- Fishing Nets
- Newspapers
- Till Receipts
- Paper Wristbands
- Sky Lanterns
- Balloons

3. The criminal offence of littering

3.1 The legal provision

23. In England and Wales, dropping litter is a criminal offence under Section 87(1) of the EPA 1990,³⁰ such that:

‘A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it’.
24. The provision continues by maintaining that it is irrelevant whether the litter is deposited on land or in water, whether it is dropped on public property or private property (i.e. regardless of ownership), provided that the place is open to the air (on at least one side) and the public has access to it, even if only with payment.
25. The Explanatory Notes appended to the 2005 Clean Neighbourhoods and Environment Act elaborate, further, that the offence of dropping litter extends beyond land, to dropping litter into bodies of water, such as rivers or lakes, and includes throwing litter from a road or public place onto adjacent private land.
26. The land area of a local authority in a coastal area extends down to the low-water mark under Section 72 of the 1972 Local Government Act. Therefore, it is also an offence to drop litter anywhere above the low water mark,³¹ which makes it an offence to drop litter on beaches.
27. It can be observed that under Section 87(4A) of the EPA 1990, no offence is committed where the litter is: (a) authorised by law or (b) done by or with the consent of the owner, occupier or other person having control of the place where it is deposited (more later).



3.2 Open to the air?

28. The criminal offence of littering and the wording used in the EPA 1990 originated from the 1958 Litter Act. The offence as envisaged in the 1958 Act, applied only to those places to which the public had the right to access without having to pay to do so. Today, this element of the offence has been changed, and it is now an offence to drop litter even in places where the public have to pay to enter.
29. What remains a point of confusion, however, is the requirement that the place be ‘open to the air’. This element is not a problem for completely open spaces such as roads, parks and village greens, but can be tricky where the space is covered, such as with buildings. For example, due to the need for the building to be open on at least one side, ‘open to the air’ therefore includes bus shelters but not the old-fashioned telephone boxes, the latter being covered and enclosed on all four sides with access available only through a closable door.³² DEFRA’s guidance states;



‘it is intended that this [i.e. ‘open to the air’] should apply to any covered place with a significant, permanent opening on at least one side, such as a bus shelter, railway platform or garage forecourt that remains open to the air at all times’.³³

To clarify the situation further, DEFRA has stated that the offence applies on:

- Public open spaces: village greens, gardens, play areas, football pitches, etc
- Private land
- Highways: roads, pavements, footways, bridleways, ginnels, etc
- All places that are open to the air on at least one side, such as a railway station, bus shelter, etc. to which the public have access
- School grounds
- At the coast, down to the low water mark
- Ponds, lakes reservoirs and rivers.³⁴

30. However, Parliamentary debates about the EPA 1990 acknowledged that there may be practical difficulties with the legislative definition:

‘public libraries and other public buildings of that kind can be just as untidy and littered as a shopping centre, but a shopping centre can be caught while a public building cannot be caught. That is illogical’.³⁵

The point is well made in terms of the social nuisance caused by discarding items of rubbish in any public building, but most shopping centres today, of course, are also not ‘open to the air’ as they are usually built with lockable doors. The notion of ‘open to the air’, therefore, involves the

danger that items will escape into the environment and so become harder to control and remove.

3.3 Legal elements of the criminal offence of littering

31. Whilst littering is a criminal offence, in the first instance litterers are generally offered the opportunity of discharging any liability to criminal conviction for that offence via the imposition of a fixed penalty notice (FPN), which can be issued by a range of public bodies. Thus, an FPN is essentially a monetary fine. This method of enforcement is generally viewed as proportionate to the gravity of the offence being committed. It is also a less expensive way of handling what are viewed as low-level offences. If the fine is not paid, then a criminal prosecution may be commenced.

3.3.1 The Physical Act of Littering

32. Once it is established that the item concerned falls within the definition of ‘litter’ and that the depositing of the item has occurred in a place covered by the definition of the offence, there are then two elements to the *actus reus* of the offence:

(a) the *throwing down, dropping, or otherwise depositing* of the litter, and

(b) the *leaving* of the litter.

Both the depositing and the leaving must be proven in order to establish that an offence has been committed.

33. In the case of *Felix v. The Director of Public Prosecutions*,³⁶ the Court held that the word ‘deposit’ in the offence ‘had to be given a very wide meaning which included placing, putting and affixing’. In the particular case at issue the defendant had left advertising cards in a phone box in ‘such circumstances so as to cause or contribute to, or tend to lead to, the defacement by litter of any place’ (Please note

that fly-posting is also now a separate offence and is also generally enforced by fixed penalty notice).

34. An important aspect of the ‘depositing’ process is that it is ‘an act fixed in point of time and not a continuing matter’.³⁷ Since littering is a summary offence (i.e. one triable in the Magistrates’ Court) the case must be brought within six months of the occurrence of the alleged offence.³⁸ The point in time of when the littering occurred is, therefore, important, as it is not an offence that continues in time – although the litter itself might remain *in situ*.
35. The court will also use common sense in determining whether an item has been ‘left’, based on whether there is evidence that ‘the article had been deposited *without any intention to remove it*, then the Court may conclude that after a short time it has been left there’.³⁹

3.3.2 Is ‘intention’ to litter required?

36. Legal opinion is divided on whether littering is a strict liability offence under the law, meaning that it does not require any intention to litter on the part of the person dropping the item. The legal provision can certainly be interpreted as conveying this meaning. If this interpretation were correct then it will be a criminal offence for someone who is about to sneeze and who, on reaching into their coat pocket for a tissue, accidentally drops a sweet wrapper out of the pocket. Indeed, parliamentary debates preceding the enactment of the 1958 Litter Act, where this wording was first used, reveal concerns⁴⁰ about just such a scenario where an individual may unknowingly drop an item, thereby turning an ‘innocent act’ into a crime, and an ‘accidental litterer’ into a criminal.
37. In the alternative, there is the argument that criminal intent is required, which means that in order to be labelled a criminal the person needs

to have the intention to deposit the item – often referred to as a ‘guilty mind’ or *mens rea*. The wording of the provision is unclear, as while *throwing* down an item clearly requires an intentional or at least a deliberate act, the other two possibilities, namely of *dropping* or otherwise *depositing* an item, however, might be done intentionally, but could also be done recklessly or accidentally.



38. DEFRA has taken the position, however, that it is not in the public interest to issue a fixed penalty notice where there was ‘not *clear* evidence that the individual intended to cause litter’.⁴¹ Consequently, for the purposes of enforcement, DEFRA has interpreted the offence as one requiring intent to cause litter and has set out guidance as to what circumstances it considers that a fixed penalty notice should be issued. DEFRA’s suggested practical way to deal with such situations, notably where there is doubt over a person’s intent, is ‘for the enforcement officer to challenge the person and to state that they have seen them drop something and to ask them to pick it up. Should the individual refuse



to pick up the litter then there would be more sustainable grounds for issuing a fixed penalty notice and pursuing prosecution, should the fixed penalty notice go unpaid'.⁴²

39. In its 2015 guidance to enforcement officers⁴³ DEFRA clearly states that there should be no fixed penalty notice (FPN) where the following circumstances apply:

Accidental littering

Don't issue FPNs for accidental littering, for example if something falls from someone's pocket.

Only issue FPNs where there is evidence of intent to drop litter.

Give offenders the chance to pick up litter before you issue an FPN. Warn them that you will issue an FPN if they don't.

No criminal liability

Don't issue an FPN in the following cases:

- the person in question is exempt, e.g. a blind person whose dog has fouled in an area where a dog control order applies
- the offender is a child under the age of 10 (inform the child's parents instead)

Enforcement action is inappropriate or disproportionate

Don't issue an FPN in the following cases:

- it's not in the public interest to do so
- the offender is vulnerable
- the offence is trivial

Prosecution is more suitable

Don't issue an FPN in the following cases:

- the offence is major, e.g. deliberate smashing of glass or racist graffiti
- the offence is committed by a persistent offender
- the offender is violent or aggressive

40. Note, that under the draft Environment Bill (2019-20), the law is to be amended so that litter authorities are duty-bound to have regard to such above guidance on when penalty notices should be issued.⁴⁴
41. Returning to the issue of 'intent', technically, the law does not state that evidence of intent to drop the litter is needed for the criminal offence to occur, and so it still could be charged as an offence of strict liability in court. DEFRA's interpretation refers to when the issuance of an FPN is appropriate, and so it has not ended the debate. Indeed, DEFRA has previously recognised that if a strict interpretation of the wording of the offence is applied it could be read as an offence of strict liability.⁴⁵ Furthermore, this interpretation is consistent with DEFRA's 2015 guidance in its reference to 'accidental littering', and in omitting 'accidents' from the 'no criminal liability' section. Consequently, DEFRA has focused on the use of FPNs and notions of proportionality, ease of proof and what it perceives as being in the public interest.
42. If we analyse the law from the perspective of litter being a social and environmental problem, regardless of intent or recklessness of the person to cause litter, then a strict liability reading of the offence would appear to be a positive outcome – as it focuses on eliminating the result, i.e. more litter. DEFRA's approach, on the other hand, is one that is possibly more practical from an enforcement perspective in the case of issuing FPNs, and arguably one that



is more proportionate in circumstances where items are dropped accidentally. This approach also ensures that there is evidence of the offence. If an FPN is not paid and the case proceeds to court, the prosecutor can, therefore, prove the act of littering using the enforcement officer's statement in asking the person to pick up the litter and the request being refused.

43. The situations that DEFRA advise to be more suitable for prosecution, rather than the issuance of an FPN are interesting as regards the notion of a 'persistent offender'. While there is some vagueness surrounding the notion of a 'major' offence, the examples given, together with the example of the offender becoming violent, indicate that the offender will be prosecuted simultaneously for a more serious offence, e.g. assault. As regards the persistent offender, there is no suggestion of just how persistent or frequent the offences would need to be to qualify the offender for that status, or whether they could all have been incidents of accidental littering. It is interesting to note that most of the representatives of local authorities to whom we spoke maintained that it was uncommon for an individual to litter a second time, once he or she had been issued with an FPN.
44. Persons under the age of criminal responsibility, which is the age of ten in both England and Wales, cannot be prosecuted for a criminal offence – and so cannot be issued with an FPN. DEFRA's guidance on littering explicitly acknowledges that latter point by referring to under 10s in the category of 'no criminal liability'.⁴⁶ The guidance is clear also that the parent or person who is accompanying an 'offending' child at the time the incident occurs should not be issued with an FPN either, presumably because there is no provision in criminal law for vicarious parental liability – it merely states to inform them of the littering.

3.3.3 Fixed Penalty Notices and the Penalty for Littering

45. Under Section 88(6A) of the EPA 1990 a 'principal litter authority' may set the penalty amount. Since April 2019 the maximum fixed penalty fine for littering has been £150 and the default fine £100.⁴⁷ Showing the scale of increase, the maximum fixed penalty fine in 2017 was a mere £80. The maximum penalty for littering which can be imposed by *the courts*, i.e. where a prosecution is undertaken, is £2,500. The penalties for littering are less severe than those for fly-tipping.
46. A person who engages in fly-tipping is liable on summary conviction for a term of imprisonment of up to 12 months or/and a fine of up to £50,000 (see the EPA 1990 Section 33(1)(8)). The offence can carry an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court. Furthermore, householders who fail to use a licensed carrier for waste and whose waste is fly-tipped could face a fine of up to £400.
47. Whilst the maximum penalty rates are often cited, there is also a *minimum* FPN penalty rate for littering: currently £65. Further research would be required to analyse the volume of FPNs issued at the differing rates, and on what basis an enforcement officer chooses to issue a variation in the FPN amount. Would a variation, for example, be more appropriate for much smaller items, such as cigarette butts, or for biodegradable items, such as apple cores, or on the basis of financial ability to pay?
48. A range of principal litter authorities, including county councils and parish councils, and also police officers, are empowered under Section 88 of the EPA 1990 to issue FPNs for littering. The titles for individuals empowered to issue FPNs varies, including street scene operators, wardens, enforcement officers, but the job roles that are at issue are similar to each other. Similarly, wardens may be appointed to carry out the role in parks under Section 92 of the



1949 National Parks and Access to the Countryside Act. On occasion, private companies are also used. This range of titles and persons able to issue FPNs, however, may be confusing to the public. It is, consequently, important for reasons of public safety and to ensure orderly law enforcement that there is sufficient public awareness of who has the power to stop people and ask them to pick up litter, and to issue fines. Visible and clear means of identification of such persons is undoubtedly important, for example the wearing of high visibility vests. Recognising this issue, the Government has recently amended the DEFRA Code of Practice on Litter and Refuse (2019) to state that such persons ('enforcement officers') should be identifiable from their dress code or badge and should also carry identification and evidence of their formal authorisation to issue penalty notices, such as a warrant card.⁴⁸ Clearly, this new legal obligation is a very welcome development.

49. There is also a legal requirement for enforcement officers to receive training before being allowed to issue FPNs. Until very recently, the training provider had to be one that was approved by the Secretary of State. From our research, it appears that some parish councils found the cost of this training to be prohibitively expensive and, thus, were not able to use the power to enforce litter offences. This approval requirement by the Secretary of State has recently been removed, however, by the Environmental Offences (Fixed Penalties) (England) Regulations 2017, which came into force on 1 April 2018. Under the new law, it is still necessary for enforcement officers to receive training, but as more course providers may be able to offer this training, it may prove to be less expensive for councils to undertake. Consequently, more parish councils may begin to employ litter enforcement officers.
50. The DEFRA Code of Practice on Litter and Refuse (2019) now clearly states that: 'The enforcing authority should have clear policies,

instructions and training available on how to exercise such authority. These policies should form the basis for staff training and should be published'.⁴⁹ This new provision should help ensure improvements in the consistency in practice of enforcement authorities. In addition, local authorities are reminded that they are bound by the principles of the Regulators Code,⁵⁰ meaning that enforcement actions for littering offences should be 'proportionate, consistent, targeted, transparent and accountable',⁵¹ a reference perhaps to the potential for inconsistent and over-zealous or heavy-handed enforcement of littering offences by some councils in the past. Furthermore, the new DEFRA Code of Practice clearly states that; 'Raising revenue should never be an objective of enforcement'.⁵²

51. If the individual pays the fine within the allocated time, no criminal charge will occur. However, if an individual appeals against payment of the fine and subsequently loses that appeal, she or he is likely to face a criminal trial and hence may receive a criminal conviction (s.88(2) EPA 1990). Although fixed penalty notices tend to be issued on the spot, there is no legal requirement for such contemporaneity. Consequently, litter authorities are permitted to issue an FPN through the post (s.88(4) EPA 1990), for example following review of CCTV evidence. Further research would be necessary to establish the level of FPNs issued by post, and the reasons for doing so.
52. It is also a criminal offence for a person to refuse to provide their name and address, or to give false or inaccurate information, to an enforcement officer where it is proposed to issue that person with a fixed penalty notice (Section 88(8B) EPA 1990).
53. If an individual decides to appeal against a fine and loses that appeal, the offence may result in a criminal conviction, which will appear on a Disclosure and Barring Service (DBS) check. A conviction for littering could, therefore, have quite serious repercussions, for example it may



result in people losing their jobs and may render them unable to take part in the US visa waiver scheme.

54. As regards the FPN monetary rate there are a range of views. In the Parliamentary debates during the passage of the 2005 Clean Neighbourhoods and Environment Act it was suggested that lower monetary fines (such as an on-the-spot fine of £5) would both increase the likelihood that people would pay the fine and the act of fining would retain the benefit of being likely to modify behaviour.⁵³ Arguably, given DEFRA's advice that FPNs should be issued only when someone refuses to pick the item up, one might think that very low fines would not be a sufficient deterrent. Other contributors to the Parliamentary debate, therefore, suggested that, on the contrary, the cost level of the monetary fine should be raised to increase the deterrent effect.
55. A further option as regards fines is to set variable fines. The maximum level at which the FPN is set could be maintained at the level of £150, but the issuing officer could take into account aspects such as size or type of litter dropped, e.g. cigarette butts or apple cores. Such an approach might yield a more proportionate response in any particular case but might also be set to cause unequal treatment amongst litterers. Following a public consultation in 2017, wherein a majority of respondents favoured increased fines, the Government levied the higher maximum fine of £150.⁵⁴ Interestingly, however, the Government added that further guidance would be necessary to ensure that local authorities 'take into account local circumstances, like local ability to pay, when setting the level for these fines'.⁵⁵
56. Similar to DEFRA's guidance, a recent Home Office Information Note suggests that the approach towards addressing litter is for the enforcement officer to give the individual the opportunity to pick it up and dispose of it appropriately before imposing an FPN.⁵⁶ This

issue was recently raised in the 'orange peel' case, however, where a man dropped a piece of orange peel and was subsequently issued with an FPN despite offering to dispose of the peel in a bin.⁵⁷ He appealed against the fine imposed on him and succeeded in his case, which lasted for nine months and apparently cost the prosecuting council £8,000 in court costs. Here are some further examples of prosecutions⁵⁸ that should not now occur if DEFRA's guidance (and the law on criminal responsibility) is followed:

- A 71-year-old was fined £75 for dropping a tissue, which had been blown away by a strong wind, while she was blowing her nose.
 - A mother was fined £50 when her baby dropped a piece of banana.
 - A mother was fined £75 after a piece of a sausage roll fell from her daughter's mouth. She appealed and won her case because the pigeon ate the piece of sausage roll so it was not regarded as littering.
57. In practice though, there is still some discrepancy among local authorities in what they treat as litter, and, therefore, for what littering they will use their enforcement powers. For example, the feeding of birds seems to be viewed as littering by some local authorities but not others. This situation could very easily lead to confusion and 'innocent' littering by persons feeding birds and ducks. There must be an onus upon local authorities, therefore, to make clear their position on such matters, and to ensure that they provide signage to that effect in likely feeding spots. Generally, however, ignorance of the law is no defence. If DEFRA's guidance is followed, the alleged offender should be asked to pick up the litter, and it is suggested that this request should only be as regards what is reasonable in such circumstances (for example, where bread is being thrown for ducks on a lake one would not expect the perpetrator to have to wade into the lake to retrieve uneaten food).



58. Since 2007, and under Section 24 of the 2007 London Local Authorities Act, local authorities in London have had the power to issue a penalty charge notice (PCN) to the ‘owner’ of a vehicle (but generally not a taxi) from which a litter offence has been committed by a passenger. In strictness, probably the law should refer to the ‘registered keeper’ of the vehicle as this designation is not always the same as ownership. Note that this penalty charge notice is issued under the civil law, not the criminal law, and enforcement must meet the civil burden of proof, namely the balance of probabilities. This approach has now been extended to the rest of England by Section 88A of the EPA 1990 – recently brought into force. Consequently, councils all over the country adopted the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations which came into force on 1 April 2018.
59. The new Section 88A EPA 1990 provision similarly allows a civil penalty charge to be imposed on ‘registered keepers’ of those vehicles from which littering offences are committed (without a need to establish the actual person who littered). Furthermore, DEFRA recently amended the Code of Practice on Litter and Refuse (2019) to support the use of CCTV evidence in cases where littering has been alleged.⁵⁹ Thus, it is likely that officers will make use of the substantial CCTV surveillance system available on the road network and of dash-cam footage supplied by members of the public as evidence of offending vehicles. It is early days, however, and it remains to be seen how the new provision will work in practice, but it is likely that a web-based reporting system may be set up to receive dash-cam evidence.
60. The new 2019 DEFRA Code of Practice provides extensive guidance on formal representations and appeals against civil penalty notices for littering from vehicles.⁶⁰ For example, representations can be made on the grounds that the littering offence did not occur (Ground A), the person became the keeper of the vehicle after the littering offence occurred (Ground B), the vehicle was a stolen vehicle when the littering offence occurred (Ground D), or it is a public service vehicle (Ground H). Ground L is a little vaguer and allows representations where there are ‘compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled’. It is unclear at present to what compelling reasons the enforcement authority will have regard. Will it, for example, allow arguments of accidental littering, such as a young child opening a rear car window which causes her sweet wrapper to be blown onto the street?
61. If it is possible to identify the actual person in the car who has littered, possibly using CCTV footage, dash-cam recordings or eyewitness evidence, it may be possible to prosecute the specific individual under the criminal law.
62. The focus groups considered the pros and cons of using ‘litter picking duties’ as a potential penalty for littering offences. However, it should be pointed out that litter picking as a penalty cannot be imposed for the offence of littering itself. Litter picking as a penalty can only be used by the courts for more serious offences, namely those that carry a custodial sentence. The litter picking penalty is here used as an alternative to imposing a custodial sentence, and in that circumstance is known as ‘Community Payback’ (the new term used to describe ‘community service’). Interestingly, litter picking as a penalty would be available for cases of serious fly-tipping. Importantly, recognising a potential drawback for volunteer litter pickers, the 2019 Code of Practice states that:
- ‘The use of litter-picking as a sanction in itself must be handled with care, to avoid creating a perception that anyone seen litter-picking must be serving some form of penalty, which could deter law-abiding citizens from volunteering to take part in these activities.’⁶¹
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3.3.4 Authorisation of littering

63. Littering may, in very limited situations, be lawful. Under Section 87(4A) of the EPA 1990, the offence of littering is not committed where the depositing of litter is authorised by law or is 'done by or with the consent of the owner, occupier or other person having control of the place where it is deposited'.
64. Can you, therefore, authorise yourself to drop litter on your own property? The simple answer for the criminal law is that it appears that you can, and so you would not have committed the criminal offence of littering. There is the potential, however, for others to require you to clear the litter through the use of a community protection notice, under Section 43 of the 2014 Anti-social Behaviour, Crime and Policing Act, or a public space protection order (under Section 59), which provides protection to individuals who may be affected by your littering.



4. Responsibilities for the Clearing of Litter

4.1 Who is responsible for clearing litter?

65. Section 89(1) of the EPA 1990 places a duty on certain bodies to ensure that land, for which they are responsible, is, so far as is practicable, kept clear of litter and refuse. The primary bodies at issue are the following:
- Each principal litter authority, as respects its relevant land (County councils, district councils, etc);
 - The appropriate Crown authority, as respects its relevant Crown land (e.g. Royal Parks and National Parks);
 - Each designated statutory undertaker, as respects its relevant land (for example, transport companies, train and tram operators, airports and Port and Harbour authorities);⁶²
 - The governing body of each designated educational institution or in Scotland such body or, as the case may be, the education authority responsible for the management of the institution, as respects its relevant land (e.g. schools, colleges and universities).

This provision means that local councils, but also schools, universities, train companies and ports authorities, for example, all have a duty to clear their land of litter.



4.2 What are the duties of litter authorities?

66. The first step in litter clearance is for each county council to consult with its local authorities (including any national park in the county) and voluntary bodies on their litter duties, including what steps each proposes to take to fulfil those duties. This requirement is contained in Section 24(1) of the 1974 Control of Pollution Act, which stipulates the following:
- ‘It shall be the duty of the council of each county in England and Wales and the local authorities of which the areas are included in the county, and where the county includes land in a National Park, the Park authority to consult from time to time together, and with such voluntary bodies as the council and the authorities consider appropriate and as agree to participate in the consultations, about the steps which the council and each of the authorities and bodies is to take for the purpose of abating litter in the county; and it shall be the duty of the county council-
- (a) To prepare and from time to time revise a statement of the steps which the council and each of the authorities and bodies agrees to take for that purpose; and
 - (b) To take such steps as in its opinion will give adequate publicity in the county to the statement; and
 - (c) To keep a copy of the statement available at its principal office for inspection by the public free of charge at all reasonable hours.’
67. Furthermore, under Section 17 of the 1998 Crime and Disorder Act, local authorities, parish councils,⁶³ joint authorities (for example, the London Fire and Emergency Planning Authority), police authorities, National Park authorities and the Broads Authorities have a



duty to ‘exercise their various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area’. The concept of the prevention of crime and disorder found in the 1998 Act could be argued to apply to the need to address specific types of litter, for example, drugs-related litter, such as syringes and needles.⁶⁴

4.3 To what standard must litter be cleared?

68. Litter is a continuing problem in many areas. Therefore, what standard of cleanliness should be imposed on litter authorities in order for them to comply with their statutory duty?
69. In determining the standard required for any particular area of land, highway or road, the litter authorities are required, under Section 89(3) of the EPA 1990, to have regard ‘to the character and use of the land, highway or road as well as the measures which are practicable in the circumstances’. Since this requirement is rather vague, DEFRA has provided further helpful guidance.
70. Namely, compliance is expected with the 2006 DEFRA Code of Practice,⁶⁵ which requires monitoring of the level of cleanliness of areas through the following grading system (with helpful photographs):

DEFRA Grading System:

Grade A	No litter or refuse
Grade B	Predominantly free of litter and refuse apart from some small items
Grade C	Widespread distribution of litter and refuse with minor accumulations

Grade D Heavily littered with significant accumulations

71. Furthermore, DEFRA sets out a classification system for ‘litter zones’ in land areas, which outlines how often litter ought to be cleared from these zones.⁶⁶ Accordingly, DEFRA suggests the following classifications:

<u>Intensity of Use</u>	<u>Frequency to be cleaned</u>
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High	busy public areas once or twice a day
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Medium	‘everyday’ areas including housing areas once a day
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Low	lightly trafficked areas every 14 days
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72. In circumstances where clearing up litter raises health and safety concerns, as would be the case on a busy road, the physical area is designated an ‘area of special circumstances’. For such areas, DEFRA’s Code of Practice⁶⁷ provides a longer clearance timeline, requiring the litter to be cleared within 28 days or as soon as ‘reasonably practicable’.⁶⁸
73. While DEFRA’s Code of Practice is very helpful in setting the levels of cleanliness, it would benefit from more frequent review to ensure it keeps pace with legal and policy developments. We understand that DEFRA has, indeed, committed to updating the Code and this commitment is welcome. We suggest that the review be carried out within a relatively short timeframe, such as by December 2022.

4.4 Responsibility for litter removal for specific areas

4.4.1 Roads: Clearing of litter and refuse



74. Section 89(1) of the EPA 1990 imposes upon local authorities, the Secretary of State, and newly-created 'strategic highways companies' the duty of ensuring that roads and verges are, so far as is practicable, kept clean and clear of litter/refuse. According to Section 3.2 of the DEFRA Code of Practice these obligations include the removal of a wide range of items, notably detritus (i.e. leaves) as well as litter and refuse. In addition, a problem, largely specific to motorways and other 'A' roads, is the removal of a high level of 'bagged' human excrement and bottled urine left in lay-bys.
75. Formerly known as the Highways Agency, 'Highways England' is the new name for the state-owned company designated to perform the role of a 'highway authority'. Under the new regulatory regime, Highways England is known as a 'strategic highways company', and the terms of the appointment must specify the area in respect of which the company is appointed and the roads in that area for which the company is responsible.⁶⁹ Specifically, and legally, one area which a strategic highways company must have regard is the environment.⁷⁰
76. Strategic highways companies are granted a single contract⁷¹ that covers all of their obligations. Such contracts include both incentives and disincentives, such as (negative) performance points. Consequently, in measuring performance there is a disincentive to close roads, which often means that lane closures for littering (and other types of work) will occur only at night in order to reduce the number of road users affected – and so the company avoids negative performance points for its operations. Night work, however, also means a reduction in visibility for those performing litter picking duties, and, hence, possibly a reduction in effectiveness.
77. The Highways Authority in Wales is the Welsh Assembly and in Scotland it is Transport Scotland. This is a devolved matter and, as several main roads run between England and

Scotland or England and Wales, this means that the three highways authorities must cooperate closely with each other across the borders as necessary to remove litter, as well as perform other duties.

4.4.1.1 Motorways

78. Highways England (hereinafter to refer also to the equivalent bodies in Wales and Scotland) is solely responsible for the clearing and cleaning of motorways (so-called 'special roads'), due to the transfer of responsibility from the Secretary of State, and also for a small number of other major trunk roads around the country.⁷² This responsibility is placed on Highways England as it has the technical expertise to oversee all operations related to the major road networks around the country.
79. While Highways England has the duty to clear litter on the motorways, its employees are not designated as being able to enforce the criminal offence of littering. Local authorities are, thus, required to enforce litter offences on all roads in their areas, including motorways. The consequence is that Highways England employees may witness a littering offence being committed in a layby, for example, but will not be able to issue an FPN. The employee will need to report the offender to enforcement officers.
80. As regards litter thrown from vehicles, the new civil penalty system may prove to be a valuable mechanism for Highways England employees in helping to keep the motorways clear of litter. Such employees will be able to record the littering and report the vehicle's registration number to the local authority.

4.4.1.2 Other roads

81. Section 86(9) of the EPA 1990 designates responsibility for cleaning roads (other than those considered above) to the district council



(in Greater London to the council of the London borough or the Common Council of the City of London; in Wales to the county or borough council and for the Isles of Scilly to the Council). The cleaning of many busy 'trunk roads' (generally known as 'A' roads or 'all-purpose trunk roads') will, therefore, be the responsibility of the local authority, in addition to their responsibility for cleaning all minor roads.

82. District and borough councils are, therefore, generally responsible for street cleaning and litter picking on minor roads/streets. In some cases, however, there may be an agreement that a parish council will instead take responsibility for street cleaning.
83. On most council websites it is possible to find a map or a list of the streets in towns that they are responsible for cleaning and the times when they clean them. For example, the website for Colchester Borough Council disclosed the following information: the council picks up litter in roads fortnightly and sweeps its streets on a six-weekly schedule. During October, November and December, sweepers concentrate on clearing leaves. The A12 from Easthorpe to Lodge Lane falls within the responsibility of Colchester Borough Council, and all verges and slip roads have litter cleared on a three-week cycle (weather permitting).

4.4.1.3 Road maintenance

84. In addition to the cleaning of public roads, and, thus, to the removal of litter, highway authorities (namely Highways England and local authorities) are responsible for road maintenance (including repair). They have that latter responsibility under Section 41(1) of the 1980 Highways Act.
85. The UK Roads Liaison Group suggests that the obligation of maintenance is wide-ranging in scope and includes: responding to inspections, complaints or emergencies; routine maintenance such as patching, cleaning and landscape maintenance; programmed maintenance such as resurfacing, reconditioning or reconstruction to a planned schedule; regulatory maintenance; inspecting and regulating the activities of others; salting and clearance of snow and ice; and provision of a planned response to weather and other emergencies.⁷³
86. In England, local authorities are co-responsible with Highways England for maintaining highways in their local area (and the equivalent bodies in Wales and Scotland).
87. It seems then that an anomaly appears to have arisen in the division of responsibility for (1) cleaning and (2) maintaining certain roads. At present, the responsibility for these tasks, at least on certain roads, is split between the district/borough councils, on the one hand, and Highways England (or equivalent country body), on the other. Highways England and Transport for London have the responsibility to *maintain* certain trunk roads, while local authorities (i.e. district and borough councils) have the responsibility to *clean* these roads.⁷⁴
88. Where it is the responsibility of the local authority itself to clean a busy road, it has to be recognised that such tasks can be very dangerous, and so it must liaise with Highways England. In clearing litter from busy stretches of roads often it will be necessary to close sections of roads, or whole lanes, or to use a rolling roadblock so as to ensure the safety of litter removal agents - particularly from oncoming traffic. Hence, there is a need for coordination between those responsible for undertaking the various tasks of road maintenance and litter removal/road cleaning.
89. Clearing litter along the highways can, thus, be expensive, time-consuming and disruptive due to the health and safety measures that need to be taken. In interview, a member of a parish council stated that the cost to the council of



helping Highways England to clear a section of the A120 and A133 was £5,000. Consequently, some members of parish councils confirmed that it can be challenging to get stretches of highway cleared of litter due to the financial and health and safety implications involved in this process.

90. In many cases this need for coordinated actions in closing roads has delayed the regular removal of litter, in particular the removal of litter on busy roads. Unfortunately, of course, even when litter is cleared, litter often accumulates again in a short period of time, which raises questions about the cost-effectiveness of clearing litter as against financing anti-littering campaigns, for example.
91. In an attempt to alleviate the problems caused by the division of responsibility between the local authorities and Highways England on busy roads, a House of Commons Select Committee has suggested that the responsibility for clearing litter on busy roads ought to shift solely to Highways England (and for roads in London, to Transport for London).⁷⁵
92. The process of 'detrunking' is one whereby a road is transferred from the control of the Secretary of State to a local authority. The transfer also moves the responsibility for maintenance,⁷⁶ and so in this way local authorities can gain maintenance duties over more roads. There is also the concept of 'unadopted' roads, which are 'roads not maintained by a highway authority' – and thus the local authority, for example, is not responsible here for road maintenance. There are two types of unadopted roads: those on new developments (such as housing estates) and those, which, by historic accident, have existed since the nineteenth century. In the case of roads created on new housing estates, Section 38 of the Highways Act 1980 allows a local highway authority to 'adopt' the road by agreement with the owner.⁷⁷ Adopting the road means that the highways authority will

have maintenance obligations and often takes place when a new housing estate becomes operational. There are possibly as many as 40,000 unadopted roads in England and Wales, where it usually remains the duty of the owners of the property fronting the unadopted road to maintain the road.

4.4.2 Beaches

93. Beaches belong to whomever owns the adjoining land to the extent of the mean high-water mark (MHW). Beaches may be privately owned by individual landlords or organisations (for example, the National Trust and the Ministry of Defence) but most beaches are public and belong to local authorities. The responsibility for cleaning beaches falls on the owner, with most, therefore, coming under the responsibility of district and borough councils.⁷⁸
94. The area of beach between the MHW and the mean low water mark (MLW) is known as the 'foreshore' and may, similarly, be owned by a range of individuals/organisations on the same basis, i.e. according to the owner of the adjacent land. Approximately half of such land is owned by the Crown Estate. Other owners include the Duchies of Cornwall and Lancaster, local authorities, the RSPB, the National Trust, the Ministry of Defence and private individuals. Beaches and the land beyond the MLW are owned by the Crown, and a small area of the seabed is owned by harbour authorities and local authorities. If beaches are leased to third parties, then responsibilities may be agreed, we understand, on a site-by-site basis according to the terms of the lease.⁷⁹
95. Some local authorities have formed partnerships with other bodies (such as Southend Council's partnership with Veolia Water) in the clearing of litter on the beaches. Others hire private contractors to clear litter or simply rely upon voluntary litter picking. Natural

England and the Maritime and Coastguard Agency are other bodies that may also become involved in cleaning beaches. Other bodies clear beaches too. Among them are the non-governmental organisations that comprise the Marine Litter Action Network (for example, the Marine Conservation Society and Beachwatch UK). Also, district authorities with a coastline will generally include the beaches in their schedule for street sweeping.⁸⁰



96. Some coastal district councils employ a specific role-holder for responsibility for beach related matters. For example, Tendring District Council in Essex employs a seafronts manager. A particular problem for beaches is the removal of dead marine animals that have washed ashore. Such removal of carcasses is also expensive because only specialist companies are allowed to do so. During our research we were told that the removal of a seal carcass cost £350.

4.4.3 Seas, Rivers, Watercourses

4.4.3.1 Marine litter: The sea

97. The Government has recently promised to 'prioritise, where feasible, a clean-up of the marine environment where litter poses a threat

to human health, biodiversity, wildlife or sustainable use without harm to associated ecosystems.'⁸¹

98. Duties are placed on ships for the appropriate disposal of litter,⁸² but litter in the oceans and seas often originates from land-based sources. It is not clear, however, that any particular public body has responsibility for the clearance of litter floating in marine waters. Although the Maritime and Coastguard Agency produces policy documents and may become involved in the clearing of litter from the waters, seemingly neither that body nor in fact any other is legally bound so to do. Consequently, and in light of the recent Government promise (above), it would be beneficial to have a designated body for the purpose of litter removal (such as the Maritime and Coastguard Agency or the Marine Management Organisation). This body should, at least, be required to monitor levels of litter on a routine basis and determine the costs involved in clearing up particular patches of marine litter. Once the marine litter data is gathered, it will be possible to determine if Parliament should create a legal responsibility on that body for marine litter clearance, including possibly setting out different levels of cleanliness for different marine spaces, such as is used for land-based litter under the DEFRA Code of Practice.
99. Wales is developing a National Marine Plan and has developed a Marine Litter Action Plan for Wales (see Section 8 of the current report for further details).
100. A key contributor to marine litter is that of single-use plastics. Aiming to eliminate single-use plastics, therefore, the Government plans to extend the single-use five-pence carrier bag charge in England to include small retailers, as well as to reduce the production and use of other single-use plastics, such as bottled water and straws.⁸³ In Scotland and Wales, the five-pence minimum charge for such bags already applies to all retailers. All these measures will



inevitably aid in the reduction of plastics entering the marine environment.

4.4.3.2 Aquatic Litter: Rivers and other Watercourses

101. It is useful to start with some definitions of key terms. A main river is defined as:

‘a watercourse shown as such on a main river map and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel’.⁸⁴

A watercourse is defined as:

‘any natural or artificial channel above or below ground through which water flows, such as a river, brook, beck, ditch, mill stream or culvert (excluding public sewers)’.⁸⁵

According to the Environment Agency, anyone who owns land above water or with a watercourse running through it is regarded as a ‘riparian owner’ and has legal duties with regards to that body of water. If the land is rented to another individual or body, there should, therefore, be an agreement regarding who will manage these duties – so that they are observed and fulfilled.

102. According to Parliament, riparian ownership is a key issue and ‘knowing who owns what and who is responsible for what can be complex’.⁸⁶ The difficulty in determining land ownership, as previously mentioned, can, therefore, also slow down the process of assigning responsibility for clearing litter and fly-tipped waste in rivers and other watercourses. However, most watercourses and rivers are owned (and known to be owned), and managed, by either the Canal and River Trust or the Environment Agency.

103. There are clearly designated bodies with the ‘power’ to remove aquatic litter, but it is less clear whether those bodies are ‘duty’ bound so to do. Most notably, the Environment Agency

and local authorities have the ‘power’⁸⁷ to undertake maintenance work on rivers. This power does include the possibility of removal of litter and debris. On the other hand, canal owners are required to remove litter from waterways, but only where such litter is interfering in navigation.⁸⁸ Going beyond removal for navigational purposes, it is unclear whether canal owners are also legally required to remove litter where it merely impacts only on the amenity purposes of the canal, such as its attractiveness.

104. Consequently, there appears to be no statutory *duty* to clear litter from rivers or watercourses. Although the 2006 DEFRA Code of Practice on Litter and Refuse refers to litter on ‘waterside land’, it does not refer to aquatic litter – i.e. litter located in the river or canal waters themselves. Nor does it specify a minimum standard of cleanliness for aquatic environments. Guidance, however, from the Environment Agency suggests that landowners (the owners of the land on which the watercourse runs – riparian owners) are those responsible principally for clearing, from the rivers and banks, litter and other obstructions such as animal carcasses, even if the obstructions did not come from the owner’s land.⁸⁹

105. The Environment Agency has responsibilities for inland waterways and is typically only required to address larger-scale incidents of pollution. However, there is one occasion when a duty of litter clearance does apply to the Environment Agency, namely when flooding has occurred.⁹⁰ Clearly, this duty is an important one, given the recently increased frequency of flooding in the UK. Moreover, it speeds up the clearance of large-scale litter and debris during such emergencies. A useful summary of the position in relation to flooding is provided by Southern Water, where it states that the Environment Agency is responsible for clearing litter from watercourses, the Highways Authority is responsible for clearing silt and sewer debris,⁹¹

and private owners are responsible for clearing gardens and driveways.⁹²

106. Drainage authorities may use enforcement powers against riparian owners to require them to undertake work on rivers or watercourses.⁹³ In practice, however, litter in rivers and other watercourses tends to be removed by local authorities only when it is a hazard to navigation or when a stretch of canal is drained for repair.
107. The Environment Agency is the designated Land Drainage Authority for main rivers.⁹⁴ It is empowered to ensure that rivers are maintained, to undertake clearance work and to charge riparian owners who have not fulfilled their duties of maintenance. As regards non-main rivers, becks and ordinary watercourses, local authorities have powers to ensure that these bodies of water are maintained⁹⁵ and can undertake clearance work and impose a charge for this if riparian owners do not fulfil maintenance duties.⁹⁶
108. The Environment Agency has an annual maintenance programme to clear obstructions from rivers that might be a flood risk. Typically, these obstructions are items that have been fly-tipped such as tyres. Local authorities can also help to collect any debris and litter and take it away for safe disposal or to be recycled.⁹⁷
109. Leaf litter has been identified as a problem that may contribute to and increase the likelihood of flooding. In recent years, there has been an increase in the total rainfall, which has led to an increased risk of flooding. Flash flooding is 'rapid flooding of an area that occurs in response to a single rainfall event, with or without a river'⁹⁸ while surface water flooding 'does not involve rivers at all, but a temporary watercourse is created by water flowing over the land without significantly soaking into it'.⁹⁹ The risks of flash and surface water flooding are reduced by the clearance of leaf litter from the roads as such debris can block drains and

decrease the effectiveness of roadside drainage systems.

110. We found that voluntary groups help clear litter and fly-tipped waste from rivers. This finding was consistent with the legal position that local authorities tend not to be involved in clearing litter from the river itself. It is the case, however that local authorities will often remove bags of rubbish once brought to land.



4.4.5 Other designated statutory undertakers

111. Other bodies which may have responsibilities to remove litter include those in charge of railway stations and train lines, airports, public park areas (such as forests, national parks, and local parks).

4.4.5.1 Parks

112. The National Trust, Forestry Commission, the Broads Authority and National Park Authorities are responsible for keeping the land that they manage – namely, parks – clear of litter.

4.4.5.2 Rail

113. Network Rail has a responsibility to keep clear of litter the operational areas known as the track bed and all land that is 'trackside', as well



as up to 100 metres from the end of the platform.¹⁰⁰ Network Rail is also responsible for cleaning at and around 18 key railway stations¹⁰¹ and the remaining 2,500 stations are managed by train and tram operating companies, which are responsible for clearing litter at their respective stations.

114. At railway stations a range of measures are taken to prevent litter. These measures include the use of CCTV, security staff, fencing, and encouraging contractors to remove debris and other materials when they have finished work. Train operators may also work with the British Transport Police to prevent littering.
115. The cost to the rail network of clearing litter remains unclear. During our research, Network Rail reported that it does not hold data on the costs of clearing litter. Rather, it has a cleaning contract with external providers who have a broader remit than to clear litter from the track beds (i.e. litter-clearing is not separately costed).

4.4.6 Private Property

116. There are also duties and relevant legal mechanisms pertaining to the clearing of litter from private property. Restrictive covenants may exist – within the title deeds to property – which indicate that the land is to be kept tidy and well-maintained at all times, where the required state extends to being free of rubbish, of litter, refuse, disposal containers, and the like. Such restrictive covenants would, thus, seek to prevent those leasing the property or prospective buyers from using land in a way that could cause harm to land which the seller has retained.
117. Certain obligations to clear litter arise in the context of houses in multiple occupation (HMOs) which are defined by Sections 254-259 of the 2004 Housing Act. Houses in multiple occupation are buildings occupied by more than

one household, which may (or may not) share amenities (such as a shared kitchen, bathroom or toilet). The duties of the manager of an HMO include a duty to maintain the common parts, which means that any part of an HMO that is not in use should be kept reasonably clean and free from refuse and litter. Thus, litter should not be allowed to accumulate, except in bins.

118. Litter and rubbish bags could create a tripping hazard, particularly in the dark. On the beach, for example, crushed cans, broken bottles, needles or other items can be difficult to see and so could cause an individual to sustain an injury. Thus, under the Occupiers Liability Acts 1957 and 1984, occupiers (individuals with the ability to exercise control over property, such as owners/landlords and tenants) may be held liable for injuries caused to individuals due to the state of the property itself – including liability for harm caused to trespassers.
119. One difficulty that may arise, according to several local authorities, is when fly-tipped waste is deposited onto private land by third parties. In such circumstances, private land owners must pay the costs of removing this rubbish from their property. Such removal costs can be expensive, particularly where the waste requires specialised disposal (for instance in the removal of asbestos), where costs can range from a few hundred pounds to over £1,000.

4.4.7 Businesses

120. Businesses tend to produce a lot of waste and often that waste may ‘escape’ from bins or storage areas. Litter may also be dropped on business premises and land, and then be blown elsewhere. Consequently, Section 34 of the EPA 1990 assigns duties to businesses with respect to the waste that they produce, whether private or public sector entities.
121. Under Section 34(1)(b) of the EPA 1990, businesses have a duty to ‘take all such measures applicable to him in that capacity as



are reasonable in the circumstances' so that their waste is properly contained and controlled while in their possession, namely to 'prevent the escape of the waste from his control' – i.e. to prevent such waste becoming litter.

122. In addition, the 2003 Licensing Act contains an extra layer of regulation for several key businesses associated with high levels of litter, namely those licensed to sell or supply alcohol; those that provide regulated entertainment and those that provide late night refreshments. In deciding whether to grant a license, the licensing authority should be satisfied that a business can comply with four key objectives of the Act, namely (1) the prevention of crime and disorder (2) public safety (3) protecting children from harm and (4) the *prevention of public nuisance*. A key area on which licensing policy concentrates, therefore, is litter, waste and street fouling, and, thus, these issues should be taken seriously in the licensing decision.



5. Measures to address the problem of littering

5.1. Relevant Statutory Powers

123. As considered above, various public bodies have duties in relation to the clearing of litter. In addition to these duties, there are powers in relation to dealing with the issue of litter, which bodies (such as local authorities) can exercise at their discretion. The discretionary powers include the following:

- **Provision of litter bins and notices about litter**

Section 5(1) of the 1983 Litter Act states that: 'A litter authority in England and Wales may provide and maintain in any street or public place receptacles for refuse or litter'.¹⁰² Section 5(4) of the same Act allows for anti-litter notices corresponding to such litter bins. Section 3 provides for the issuance of government grants to arrange publicity to discourage littering.

- **The selling of litter**

Under Section 5(7) of the 1983 Litter Act 'A litter authority may sell refuse or litter removed by them from any litter bins'.

- **Help with Expenditure**

Under Section 6(1) of the 1983 Litter Act, a county council and a metropolitan district council may pay for bins or litter notices in areas of parish councils.

- **Restrictions of access when people litter**

Section 2(1) and Schedule 2 of the 2000 Countryside and Rights of Way Act affords a power to remove a person's right of access to land if that person commits a criminal offence, which therefore could include littering.

- **Powers related to well-being**

Under Section 2(1) of the 2000 Local Government Act, every local authority has

the power to take measures, which it considers likely to achieve the promotion of the economic, social or environmental well-being of an area. Such powers include to incur expenditure or 'give financial assistance', possibly for anti-littering activities.

5.2. Principal mechanisms for dealing with litter and waste in England and Wales

5.2.1 Anti-social behaviour orders

124. Litter is often viewed as a social and environmental problem. Littering by a specific individual can also be viewed as a nuisance or annoyance, particularly to neighbours. In such circumstances, littering may, therefore, qualify as 'anti-social behaviour',¹⁰³ and so are there ways to stop such behaviour?
125. Anti-social behaviour is defined under Section 2 of the 2014 Anti-social Behaviour, Crime and Policing Act, to include '(b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or (c) conduct capable of causing housing-related nuisance or annoyance to any person.'
126. Under Section 1 of the Act, a court may grant an injunction against any person aged at least ten if (and only if), under Section 1(2), 'the court is satisfied, on the balance of probabilities, that the respondent has engaged in or threatens to engage in anti-social behaviour' and 'the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour'. This approach allows an injunction to be imposed upon an individual for littering, whether the littering occurs in the vicinity of an individual's



front-door or on the pavement.¹⁰⁴ The issuing of an injunction is done to stop a particular activity, and may also include the power for a police officer to arrest a particular individual.

127. Where an individual, group or business has made a complaint about anti-social behaviour to the relevant district council (or other listed body), that complainant may seek a review, under Section 104 of the 2014 Act, of the response made by the council, for example if they are not satisfied with the outcome. This may be a valuable avenue for redress for victims of persistent anti-social behaviour, for example, where there are multiple complaints of the same activity. Under this provision, complainants can request the relevant body to undertake a case review. The relevant body may undertake a review with as few as only one complaint, but is required to do so in circumstances where there are at least three complainants (Section 104(4)(b)). To review the response to complaints, the relevant body will, consequently, collect and review information, examine what action has been undertaken and decide whether any further action should be taken.

5.2.2 Community Protection Notices (CPN)

128. A community protection notice (CPN) is a mechanism designed to address unreasonable, ongoing problems or nuisances (including statutory nuisances) that adversely affect a community's quality of life – thus, could be used to address ongoing problems with littered areas. The CPN replaces earlier measures (specifically litter clearing notices) and brings a host of detrimental behaviours into one measure.
129. Section 43 of the 2014 Anti-social Behaviour, Crime and Policing Act allows a police officer or person designated by the local authority, or possibly a Police Community Support Officer, to issue a CPN to an individual aged sixteen or

over, or a business or organisation, if the following two conditions are met: '(a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and (b) the conduct is unreasonable.'

130. Under Section 43(3) a CPN may impose upon the individual, business or organisation: '(a) a requirement to stop doing specified things; (b) a requirement to do specified things; or (c) a requirement to take reasonable steps to achieve specified results'. Thus, a CPN could be issued to require a business to take action to reduce littering in front of its premises.
131. Conditions for imposing a CPN under Section 43(5) include '(a) a written warning must have been given and (b) that despite having had enough time to deal with the matter, the individual, business or organisation is still having a detrimental effect'. An example given in the Explanatory Notes to the Act refers to use of the provisions to cover littering, and suggests that the CPN could be issued against the business, for instance if it were a small shop, or possibly against the store manager for larger stores and supermarkets.
132. If the individual, business or organisation fails to comply with the terms of the notice, then, under Section 47 the local authority may have remedial work carried out and will charge the individual, business or organisation the amount that it cost to undertake the work (Section 47(6)). Under these provisions there may, therefore, be the need to enter onto property in order to carry out such remedial work. However, under property law there is a rule that persons generally do not have a right to enter onto property without the consent of the owner or occupier of the premises.
133. Under Section 47 the possibility of the local authority undertaking such remedial work, e.g. clearing litter, then sub-divides into two categories. First, where the remedial work to be carried out relates to land that is 'open to the air', for example clearing rubbish from a front



garden; and secondly, in respect of 'premises other than land open to the air', such as a building. For the first category, namely land open to the air, the failure of the individual, business or organisation to comply with the notice (under Section 47) itself affords the local authority the right to enter land and undertake the remedial work. However, consent of the individual, business or organisation is still required for entry to land where the remedial action requires entry to premises (i.e. where it is not 'open to the air').

134. According to the Explanatory Notes to the 2014 Act for example:

'...if the behaviour related to a front garden full of rubbish, the individual could be given a period of seven days to clear the waste. The issuing officer could also make clear on the face of the notice that if this was not complied with, they would authorise the works in default on a given date and at a given cost. Consent would only be required when that work necessitated entry to the perpetrator's property – those issuing a notice would be able to carry out remedial works in default in areas "open to the air" (section 47(5)), for instance clearing rubbish from a front garden. This is in line with [previous] provision in Section 92 of the Environmental Protection Act 1990'.

135. A person who fails to comply with a CPN commits a criminal offence under Section 48(1) unless the individual has a reasonable excuse for failure to comply (Section 48(2)). Upon conviction, the Court may make a remedial order to ensure that the requirements of the CPN are satisfied, and for summary conviction, an individual would be liable to a fine (currently) up to £2,500. An organisation, such as a company, however, could be fined up to £20,000. Alternatively, under Section 52, a fixed penalty notice of up to £100 may be issued to anyone who there is reason to believe has committed an offence under Section 48. The issuance of a fixed penalty notice means that the individual will not receive a conviction for

the offence. Further research will be needed in the future to demonstrate if CPNs are used as a mechanism to abate littering, and to establish the levels of fines typically imposed.

5.2.3 Public Space Protection Orders (PSPO)

136. A public space protection order (PSPO) is designed to deal with a particular nuisance or problem in a specific area by imposing conditions upon the use of the area. According to the Explanatory Notes to the 2014 Anti-social Behaviour, Crime and Policing Act, a PSPO could be used, for example, to 'prohibit the consumption of alcohol in public parks or to ensure dogs are kept on a leash in children's play areas'. Such orders could, arguably, also be issued to prohibit the build-up of litter in a specific public place.
137. A PSPO can only be used in respect of land that the local authority has the power to regulate. Consequently, a PSPO can be made by a local authority, under Section 59(1) of the 2014 Act, if the two conditions under Section 59(2) and (3) are met, namely, '(a) activities carried on in a public space within the authority's area have had a detrimental impact on the quality of life of those in the locality, or (b) it is likely that activities will be carried on in a public space within that area and that they will have such an effect', AND the effect must be (a) of a 'persistent or continuing nature', (b) 'to make the activities unreasonable' and (c) 'justifies the restrictions imposed by the notice'.
138. Under Section 59(4) the PSPO will identify the public place concerned and '(a) prohibits specified things being done in the restricted area, (b) requires specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things'. The PSPO could, therefore, be designed to prohibit littering in a specific, designated area.



139. Under Section 60, the maximum duration of a PSPO is 3 years, although this period can be extended. Failing to comply with a PSPO is a criminal offence under Section 67 and the person can be liable to pay a fixed penalty fine of up to £100 (Section 68) or to prosecution where the maximum fine is (currently) £1,000.
140. Before making the order, the local authority must publicise the proposed order and consult the chief officer of police, the Police and Crime Commissioner (or the equivalent in London) and any representatives of the local community they consider appropriate. Once made, a PSPO must be published on the local authority's website and by a notice on a public space adjacent to the area to which the order relates, so that people are made aware of the restrictions in place. A PSPO can also be made by a body, other than a local authority, if that body is designated by the Secretary of State in respect of the land.

5.2.4 Data on the Usage of CPNs and PSPOs

141. Freedom of information requests yielded us data on the use by district and borough councils of PSPOs and CPNs. That data shows that PSPOs and CPNs were rarely used (at the time of analysis). When PSPOs and CPNs were issued, the evidence suggests that they were used to tackle other forms of anti-social behaviour, rather than littering. Furthermore, many district and borough councils involved in this research were either not aware of CPNs and PSPOs, or viewed these new measures as unsuitable to address littering problems, preferring to use the criminal law instead. They viewed the power to issue FPNs for littering offences to be sufficient and proportionate to address the litter problem. There is a need for further research, therefore, on the use of these new measures in the future.

142. Indeed, in its 2017 *Litter Strategy*, the Government reports that the Home Office has already established the Anti-social Behaviour Advisory Group so as to monitor the effect of these new powers in practice, including in relation to littering.¹⁰⁵

5.2.5 Closure of Premises Notice

143. Section 76 of the 2014 Anti-social Behaviour, Crime and Policing Act sets out provisions for the closure of business premises on the basis of nuisance or disorder. This provision is probably unlikely to be used in the case of littering, but it is included here for completeness. The provisions in this Act replace many of the provisions in the 2003 Licensing Act.
144. Under Section 76, a temporary closure notice may be issued if a local authority is satisfied on reasonable grounds that:
- (a) The use of premises has resulted or (if the notice is not issued) is likely soon to result in nuisance to members of the public; or
 - (b) There has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises.
145. Under Section 77, the maximum period of closure is 24 hours, or 48 hours if the notice is issued by an officer of superintendent or higher rank, or the notice is signed by the chief executive officer of the local authority.
146. A much more severe measure, a closure order, can be made by a court under Section 80 but only where:
- (a) A person has engaged or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises; or
 - (b) The use of the premises has resulted, or (if the order is not made) is likely to result

in serious nuisance to members of the public; or

- (c) There has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises.



5.3. Further local authority powers

5.3.1 Parish council powers

147. Under Section 88(9)(f) of the Environmental Protection Act 1990, a parish council is recognised as a ‘litter authority’ and so can issue FPNs for littering. In practice, however, members of the parish councils that we interviewed were unaware that they have the power to issue FPNs.
148. This lack of awareness of the powers of parish councils may, in part, be explained by the formal training requirement imposed on parish council officers before they could exercise the power to issue FPNs (under the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007). This Regulation required successful completion of an approved course of training provided by a ‘recognised training provider’, which had to be approved by the Secretary of State.

149. Clearly, the requirement of approval of training providers by the Secretary of State was an unnecessary and burdensome requirement, with the result, we understand, that only one provider gained approval. The course was also quite expensive, at £450+ VAT for one person or £800+ VAT for two people.¹⁰⁶ In contrast, in Wales, where there is no similar requirement, it is simply necessary to undertake some form of training. Therefore, DEFRA suggested that a similar approach should be taken in England,¹⁰⁷ and the requirement for such high-level government approval of the training provider has now been removed.¹⁰⁸ In practice, very few members of staff from parish councils attended these courses. Most attendees were drawn from district and borough councils.

150. Due to the apparent low level of awareness among parish councils of the power to issue FPNs, we suggest that government take measures to increase the level of awareness so that parish councils can help address litter problems in their own communities – which they showed a clear desire to do during the course of our research.

151. The removal of the requirement for Secretary of State approval of training providers is a welcome development, but it would now be beneficial for government to provide guidance about the content of the training to ensure parity across different parish councils. Such guidance could include reference to the following: training providers’ credentials and/or relevant experience; training duration; and the content and ‘learning outcomes’ for the training.

5.3.2 Power to clear litter on private land

152. Under Section 22(3) of the 1974 Control of Pollution Act a local authority may arrange for the cleaning, for payment, of private land by entering into an agreement with the occupier or any person who has an interest in the land.



There must, therefore, be consent and payment by the person and this power only relates to 'land in the open air to which members of the public have access, either as of right or otherwise' but not to a highway. Again, it would be valuable to undertake research into the extent of use made of this power.

5.3.3 Loss of amenity

153. Under Section 215 of the 1990 Town and Country Planning Act, 'if it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of the land in their area' the authority may serve on the owner and occupier of the land a notice requiring specified steps be taken to remedy the condition of the land within a specified period. Again, it is unclear what use the local planning authority makes of this provision.



6. Redress Available to Members of the Public

154. As considered above, local authorities and other relevant bodies have duties to clear litter and powers to ensure that relevant persons or bodies clear up litter. In circumstances where local authorities or other relevant bodies have not fulfilled their duties to clear litter, individuals may be able to take action. We proceed now to detail that action.

6.1 Reporting a litter problem

155. Individuals can report litter problems to the local authority in various ways. They can use the Government website¹⁰⁹ or district and borough council websites, and they can use various Apps such as *Littergram*, and, if action is not taken to address the litter, they can approach the local authority's Environmental Health Department.

156. First of all, under Section 79(1) of the EPA 1990 the local authority is required to take such steps as are reasonably practicable to investigate the complaint and the local authority may issue an 'abatement notice', which is designed to prohibit or restrict the activity and, thus, prevent the nuisance recurring (Section 80 EPA 1990). Persons or businesses not complying with such an order may be guilty of an offence.

157. What if an individual has raised a complaint about a litter problem and is dissatisfied with the response of the local authority? In such circumstances the law provides that she or he may complain to the Local Government Ombudsman in England¹¹⁰ or the Public Service Ombudsman in Wales¹¹¹ (as appropriate). In addition, the draft Environment Bill (2019-20) makes provision in Section 29 for members of the public to complain to a new Office for Environmental Protection (OEP) 'if the person believes that a public authority has failed to comply with environmental law'. It remains to be seen, however, how this provision will operate in practice, and whether it will be used

to address littering, if the Bill is enacted into law.

158. Furthermore, under Section 91 of the EPA 1990, specific provision is made for an individual who is aggrieved by litter or by refuse to bring legal proceedings in the Magistrates' Court against the litter authority. Section 91 of the EPA 1990, is specifically directed at litter, and so it will be easiest to complain about litter under this provision.

159. The litter authority has the power to act upon such a complaint and, under Section 91(6), may make a 'litter abatement order' requiring the defendant to clear the litter within a specified time period. If the defendant does not comply with the litter abatement order, she or he will be guilty of an offence and liable to a fine.

160. In addition, as mentioned above, littering is a form of anti-social behaviour and there is an additional mechanism of complaint open to tenants affected by litter. Tenants can report such behaviour to their respective landlord. A landlord may ask the tenant to gather information, but if the problem is not dealt with, then a tenant may complain to the Housing Ombudsman¹¹² (or the Public Service Ombudsman in Wales¹¹³).

6.2 Private legal actions

161. Before analysing the various legal claims relevant to littering, it is important to make some preliminary points on the costs and risks of litigation.

162. In any type of private legal action, the claimant must remember that litigation always involves a level of uncertainty in how the case will progress. Court proceedings can be expensive and time-consuming, and often stressful. Although it is within the discretion of the court, the usual rule as to costs is that the losing party



pays the winning party's costs. Thus, if the claimant loses the case, he or she will tend to have to pay the defendant's legal expenses as well as their own. In summary, litigation is generally to be avoided where possible.

163. Litigants are also required to use an alternative method of resolving the dispute before going to court, such as mediation, arbitration or referring the case to the relevant Ombudsman. If such an alternative were not sought, then the court may decide that a successful claimant will not recoup his costs. Indeed, the duty to consider alternative means of resolving the dispute is continuous and so applies even once proceedings have begun. Furthermore, cases must be dealt with in a way that is proportionate to the amount of money claimed as well as the complexity of the issues involved – thus, relatively small matters will not be allowed to consume vast quantities of court time. In addition, litigants need to comply with any pre-action protocols before commencing proceedings and to bring proceedings within any set time limits.
164. It is important to remember that even if the claimant wins the case, the defendant may not comply with the court order, which will necessitate further court proceedings, time and costs to try to enforce the judgment.

6.2.1 Private criminal prosecutions

165. Section 3 of this report detailed the criminal law in relation to the offence of littering, and the main method of enforcement by the state (i.e. the police, local authorities and other litter authorities).
166. It may also be possible for an individual or organisation to take a private prosecution against someone believed to have committed a criminal offence of littering, under Section 6(1) of the 1985 Prosecution of Offences Act. Such a claimant would be advised to ensure that they

have reliable evidence of the offence being committed and should be aware of the costs involved in bringing a private prosecution.

167. The individual does not need to inform the police or local authority before initiating a private prosecution, but he or she does need the permission to do so from the Magistrates' Court. In order to obtain that permission, the claimant will need to establish a 'case to answer' (i.e. will need to provide evidence of the offence). The Court will proceed to issue a summons and serve it upon the defendant, and arrange the hearing. Failure to attend court by the defendant could result in arrest. A private prosecution would need to be commenced within six months of the alleged offence occurring (again noting the need to prove 'when' the littering offence 'occurred'). While private criminal prosecutions do have the potential to be expensive, they can provide a valuable measure of last resort in circumstances where public authorities have failed to exercise their discretion to prosecute.
168. Returning to tenant issues again, usually it is appropriate for civil courts to handle legal matters between landlords and tenants – as opposed to the criminal courts. Yet, in some circumstances, namely when premises are in a state that could cause a nuisance or cause harm to health, the Magistrates' Court (which deals with criminal offences) can take action that can include ordering compensation, imposing criminal fines or making orders that relevant work be carried out. The legislation will not apply simply if the property is in a state of disrepair, however, it must be instead shown that a nuisance has arisen or that there is a risk to health.



6.2.2 Nuisance

169. Littering may qualify as nuisance and there are three forms of nuisance for the purposes of the law: statutory, public and private.

6.2.2.1 Statutory Nuisance

170. In certain circumstances, littering may constitute a statutory nuisance under Section 79 of the EPA 1990. Section 79 contains a list of typical nuisances, such as the emission of fumes, noise or dust from premises. Litter is not specifically mentioned, but may fall under the headings of *'any premises in such a state as to be prejudicial to health or a nuisance'* or *'any accumulation or deposit which is prejudicial to health or a nuisance'*. Consequently, there is the requirement to show that the amount of litter present fulfils the concept of an 'accumulation or deposit', which must also be 'prejudicial to health or a nuisance', or, similarly, that 'any premises' are 'in such a state', due to litter, as to be 'prejudicial to health or a nuisance'. Where the litter in question fulfils these conditions, the procedure allows the aggrieved individual to make a complaint to a court under the notion of 'statutory nuisance' (Section 82 of the EPA 1990).
171. Section 82 can be quite difficult to navigate. During our research, we found that for a small fee, the website *Noisedirect* provides a Section 82 Advice Pack for individuals considering litigation via this route of legal redress.¹¹⁴ While this specific advice is aimed at individuals making complaints about noise, the pack provides advice on the legal process individuals can take to address behaviour that constitutes a nuisance more broadly and so it may be helpful for those seeking to act against littering also. Individuals can also seek free advice from *Citizens Advice* and other free legal and advisory services.
172. In order to hear a private action, the Court has to be satisfied that the claimant has attempted to resolve the problem. The claimant should

write to the person concerned (which could be the local authority) in such a way as to: explain that he or she believes that the recipient of the letter is causing a nuisance; give the reason that the conduct amounts to a nuisance; and warn the recipient that action will be taken if steps are not taken to address the nuisance. If the problem continues, the claimant should write a further letter explaining that he or she intends to apply to the Magistrates' Court for proceedings to take place and give the other party three days' notice of his or her intention to do this.

173. The statutory nuisance procedure under Section 82 has many advantages over the County Court procedure for a private nuisance action (below). The main advantage of issuing a statutory nuisance claim is that there is no requirement for the aggrieved person to have any property rights. Furthermore, there is no fee on an application for summons for private prosecutions, so it may be less expensive than a private nuisance claim. Section 82 remains a little-used means of redress, however, and so while it provides a potential method of addressing a littering problem, it is unclear when such a case would succeed. Most cases raising arguments under Section 82 tend to focus instead on noise nuisance.

6.2.2.2 Public Nuisance

174. Public nuisances are crimes. A public nuisance is defined as something that, 'materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects'. Pedestrians, for example, are generally capable of being a 'class' for these purposes. For current purposes, therefore, if litter is causing a nuisance such that it involved interference with a pavement or path, then it follows that pedestrians wishing to use the affected pavement or path would constitute a 'class' for the purposes of a claim.



175. Although public nuisance remains a common law crime (i.e. one not contained in an Act of Parliament), its use has declined, and normally prosecutions are brought instead via relevant legislation (as above). As a general principle, local authorities can apply for an injunction under Section 222 of the 1972 Local Government Act to assist in preventing a public nuisance,¹¹⁵ namely to prevent someone doing something, but the court will not exercise its discretion to award an injunction if the behaviour is anti-social, where the more appropriate order is an anti-social behaviour injunction.¹¹⁶
176. A public nuisance can also be actionable as a civil claim where an individual has suffered damage beyond that suffered by the rest of the public. For example, in the illustration provided above, a pedestrian affected by littering on the pavement would be a member of a 'class'. If that pedestrian sustains a personal injury as a result of that litter – by slipping on the litter, for instance – then he or she would have suffered damage over and above that of the rest of the class affected. More specifically, the damage must be 'substantial' and 'direct', rather than consequential. It is possible to claim damages for personal injuries, property damage and economic loss through this route. Consequently, the types of claimants for a civil claim for public nuisance could include pedestrians injured as a result of litter or a business whose trade has been affected by litter.
177. Civil remedies for public nuisance are injunctions, monetary compensation (damages) and abatement. An *injunction* is a discretionary remedy and so is not a guaranteed outcome of the case. In public nuisance, an application for an injunction is made by the Attorney General or by the local authority. It can be difficult to persuade the courts to exercise their discretion to grant an injunction in public nuisance, however, as mentioned, if specific legislation such as the Environmental Protection Act 1990

can be relied upon – as here.¹¹⁷ In public nuisance there has to be 'special damage' in order for a compensation claim to succeed. *Abatement* is a form of self-help and consists of the claimant taking steps to stop the nuisance. This remedy, however, is thought to be available only in urgent cases and carries a number of legal and practical risks for the person if their claim is unsuccessful (for instance if they attempt to remove the nuisance and injure themselves or someone else).

178. Nuisance claims can be supplemented with a claim in human rights (below). Such a claim may be available, for example, where the nuisance significantly affects the person's health or home life. Here the nuisance would need to be caused by the local authority, either by an action of the local authority, or by its inaction – for example, in failing to apply the law to remove litter nuisances. The standard of harm, however, is high to make a substantive claim (under Article 8 of the European Convention on Human Rights), but procedural claims possibly less so. Here the court is generally looking for a failure by the state to enact sufficient laws or a failure to enforce its laws.

6.2.2.3 Private Nuisance

179. Private nuisance requires an unreasonable use of land by the defendant, which leads to an unlawful interference with a person's use or enjoyment of land, or some right over or in connection with land, that causes damage – either to the land or damage to health, which impairs the use or enjoyment of the land. In private nuisance, the key requirement is that the claimant must have some interest in the land affected (such as being the owner of a house), and so it is normally a claim brought between neighbours. It is possible that someone whose land is affected by littering could bring a claim in private nuisance.¹¹⁸ An example might be if litter is frequently blown onto his property from neighbouring property,

or if the neighbour's property is so littered with rubbish that the claimant's property value has decreased. However, it will only constitute a nuisance if the littering at issue meets the test of being something that would be regarded as a nuisance by a 'reasonable person'. This legal test imposes an objective perspective on the level of actionable nuisances.

180. It is possible, therefore, to sue the person responsible for the littering that caused the nuisance. In most cases of private nuisance the person sued will be the occupier of the land from which the nuisance emanated, regardless of whether they caused the nuisance. The case of *Sedleigh-Denfield v O'Callaghan*¹¹⁹ established that an occupier of land can be sued even if he did not create the nuisance (for example, the litter), provided that he had knowledge of the existence of the nuisance and failed to take reasonable steps to deal with it.
181. Civil proceedings for private nuisance can be brought in the County Court, and, depending on the amount claimed, may fall within the remit of the Small Claims track, which qualify for reduced costs, or the Fast Track. Claimants can file their claims online with the court and pay the court fee, and the court will serve a summons on the defendant. If the case is proven, possible remedies include financial compensation and an injunction to stop the nuisance from recurring.

6.2.3 Negligence

182. In certain circumstances, littering can give rise to damages in 'negligence' when it causes personal injury. An example of a claim in negligence would be someone who slipped on a banana skin while walking across a train station. The train station owes a duty of care towards lawful users of its premises, and part of that duty is to keep pedestrian areas, which are subject to frequent usage, clear of any dangers. It would be a stronger claim, for example, had a

banana skin been in place for a relatively long period of time, as the actions of the train station staff in maintaining the areas will be measured against the standard of what is reasonable to be expected in the circumstances.

6.3 Public law actions: Judicial Review

183. An individual, group or organisation can bring an action for judicial review if an official or public body has failed to perform a mandatory public duty, for example, a local authority has failed to carry out its duties under Section 89 of the EPA 1990.
184. Any individual, group or organisation can apply for judicial review, provided that he/she/it has a sufficient interest (known as 'legal standing') in the matter. An individual who is directly affected by a decision by, or an omission to act by, a public body, should be able to establish such an interest. For example, someone who has been affected by a local authority's breach of its duty under Section 89 could be eligible.
185. In judicial review cases, littering should be seen as an 'environmental issue'. As such, while judicial review proceedings are ordinarily very expensive, a mandatory cap on costs applicable to environmental claims should cover a judicial review case regarding litter.¹²⁰ The costs cap forms part of a policy that aims to guarantee access to justice at an affordable rate in environmental claims. The costs cap will also alleviate some of the risk of bringing court proceedings, because it limits the claimant's liability to pay the defendant's costs to £5,000 (if an individual or £10,000 if an organisation) should the claimant lose the case.¹²¹
186. As regards the outcomes of such a case, the Court can make a mandatory order requiring the local authority to perform a function such as to clean a highway as the authority is required to do by Section 89. Compensation,

however, is unlikely as it is rarely awarded in judicial review cases.

6.4 Creative litigation

187. There have been several recent attempts to take creative and strategic approaches to litigation in order to improve levels of environmental protection. One of the most important actors has been a group of activist lawyers, *Client Earth*, who have had some success in using litigation in novel ways for the enforcement of environmental laws.
188. ClientEarth recently won a case against the UK Government for its breach of EU air pollution levels, notably its failure to comply in parts of the country with the limits for nitrogen dioxide levels.¹²² Although this is an emerging area of litigation, there is potential for use in

combatting littering, possibly in relation to marine littering where the UK has relevant international commitments. It would only be useful in enforcing existing commitments, however, because courts will not order the UK parliament to enact legislation.



7. Other potential actions

189. There are a number of techniques which may be used by the Government to protect the environment, including economic instruments (such as fiscal measures, grants and trading schemes), informational devices (advertising campaigns and eco-labels), voluntary agreements (codes of conduct and agreements to operate environmental management systems) and legal regulation (civil and criminal punishments for failure to comply with licensing requirements).¹²³
190. Alternative non-governmental ways in which litter could be addressed are considered below.
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7.1 Increase in receptacles for disposal of litter (e.g. wall-mounted ashtrays and bins)

191. Since there are now many buildings within the UK in which it is illegal to smoke, an important way of reducing litter is the provision of receptacles for cigarette-related litter. For example, Braintree Council in Essex introduced a portable ashtray campaign, which proved to be popular and which led to a noticeable reduction in cigarette butts on pavements.¹²⁴ Similarly, it has been suggested by a parliamentary Select Committee that the tobacco industry could arrange for portable ashtrays to be given to consumers at the point of sale and that receptacles for the disposal of cigarette-related litter could be installed outside public buildings.¹²⁵
192. As regards other litter, recently the Government promised new guidance on 'binrastructure' (the design, number and location of public litter bins) in its *Litter Strategy for England*.¹²⁶
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7.2 Paid recycling schemes

193. Paid recycling schemes serve to incentivise recycling as well as to decrease litter. These schemes involve payment for the recycling of specific items of litter, such as glass bottles. Legislation was passed in Oregon, USA¹²⁷ as early as 1971 for example, which was amended in 2007 (the Oregon Bottle Bill). This law requires cans, bottles, containers of soft drink, beer and water sold in Oregon to be returnable with a minimum refund valuable – and it has been credited with reducing litter. Questions have, however, been raised about whether the costs of such a scheme outweigh the potential benefits.¹²⁸ Further research, therefore, would be beneficial to determine whether this is true in practice. One example of such a scheme in the UK is the 'Cash for Cans' programme.¹²⁹ Cash for Cans is a collection and recycling scheme for aluminium drinks cans.
194. The Government has suggested the introduction of a 'reward and return' scheme for plastic bottles,¹³⁰ and has said that through the draft Environment Bill (2019-20) it will seek the power to be able to introduce charges for specified single-use plastic items.¹³¹
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7.3 Increasing fines

195. Opinions differ on the appropriate level of the monetary fine for littering.¹³² Due to the variation in views on this issue the Government launched a public consultation in 2017 to learn more about public attitudes to fines. Interestingly, a majority of respondents to the consultation were in favour of increased fines.¹³³ Consequently, in October 2017 the Government announced an increase to the FPN for littering from £80 to £150 (with the default fine set at £100) to take effect from April 2018. It will be interesting to see whether in the next decade the new, higher fine is indeed successful



in changing behaviour – particularly because many people seemed to be unaware of the previous fine amount. Furthermore, it was clear in the focus groups and interviews that awareness of the level of the fine was limited, and so it is questionable as to whether increasing the fine to £150 will, at least initially, lead to behavioural change.

196. As regards the level of issuance of fines, in practice, there is wide variation in the number of fines issued by district and borough councils (see Appendix 1). Some district and borough councils do not issue fines at all, while areas with private enforcement officers (such as Kent) and district and boroughs, which might be regarded as socially deprived areas (such as Birmingham City), are more likely to issue FPNs for littering.

7.4 Business and NGO initiatives

197. The litter problem, as a whole, has become worse across England since 2015.¹³⁴ In particular, littering of fast-food packaging has increased over the past decade by more than 10 per cent. Moreover, the geographic problem of fast food litter has also expanded as the incidence of this type of litter increasingly occurs further and further away from the place of purchase. As a consequence of the increase in such ‘food on the go’ litter, DEFRA has drafted a Voluntary Code of Practice for fast-food outlets in an attempt to encourage more action from the fast food industry to reduce littering.¹³⁵ It must be recognised, however, that additional actions required of businesses may impact particular companies and industries more than others, with consequent increases in costs.
198. While the fast-food industry is one example of an industry that is typically subject to an increased incidence of littering around its establishments, London theatres are another. In regards to imposing additional burdens on

theatres, however, it is clear that many theatres are already struggling financially, and, thus, imposing additional burdens of clearing litter produced by their customers, particularly cigarette butts and theatre stubs, may be viewed as imposing an unreasonable burden.¹³⁶ Indeed, recognising this type of consideration more recently, the Government did not think it appropriate to impose a separate legal responsibility for litter picking on the owners of restaurants or retail premises.¹³⁷ The reasoning provided for the Government’s position on this occasion was that it was not convinced that an additional regulatory burden on these businesses would deliver an improvement on the status quo. Secondly, the Government viewed that such an obligation would also vastly increase the number of organisations with statutory responsibilities for clearing litter, creating potential problems of accountability, enforcement and varying standards.¹³⁸

199. Nonetheless, it is clear that businesses have been voluntarily taking measures and could possibly take further measures to help prevent litter. Some of these measures are detailed below:

- **Anti-littering advertising**

The Society of Motor Manufacturers and Traders, the British Parking Association and the British Vehicles and Leasing Association have all made commitments to prevent litter and to carry anti-littering messages on websites and vehicles.¹³⁹

- **Measures to address biodegradability of products and packaging and to reduce packaging**

In 2010 a European Commission Report¹⁴⁰ urged that products and services should use fewer resources. The Commission suggested that such a goal could be achieved by ‘informing consumers, supporting research and technological development of new products, as well as creating good examples for business, and perhaps, raising taxes on the use of natural resources’.¹⁴¹



In its *25 Year Plan to Improve the Environment* the Government commits to encouraging the development of bio-based, biodegradable and environmentally friendly plastic through its Clean Growth Grand Challenge and its Bioeconomy Strategy.¹⁴² In the summer 2019 policy statement regarding the then 2018 Draft Environment (Principles and Governance) Bill, the Government announced legislation to introduce 'Extended Producer Responsibility' schemes. The purpose is to 'ensure those who place packaging on the market take more responsibility for the costs any waste of that packaging imposes' according to the 'polluter pays' principle'.¹⁴³

Individual businesses have also taken measures to address the plastics problem. Waitrose, for example, is trialling a 'bring your own' container scheme, encouraging customers to buy loose produce.¹⁴⁴

■ Voluntary Codes of Practice

One way to reduce litter is through the use of voluntary codes of practice whereby businesses are encouraged to take responsibility for the litter generated by their products. *Keep Britain Tidy*, for example, runs a Litter Prevention Commitment and in 2014 reported that a number of businesses had already signed up to the commitment, including McDonald's, KFC, Coca-Cola Enterprises and Wrigley.

The DEFRA Voluntary Code of Practice¹⁴⁵ aims to reduce the litter generated by those businesses that sell 'food on the go'. The Code defines fast food as 'any edible product which can be eaten immediately upon exiting the premise in which it was bought'¹⁴⁶, including for example, drinks, sandwiches, snacks, burgers, chips and the packaging on these items. The Code aims to encourage businesses, local authorities and the public to reduce litter from food and drink, and emphasises the need for businesses to take

'some corporate social responsibility'. The Code provides a framework for these businesses to identify how, when and where the worst litter problems arise and to work out how they may form partnerships with other agencies to address litter.

■ Businesses clearing up litter or paying for litter clearance beyond their premises

The Communities and Local Government Select Committee, in its *Report on Litter and Fly-Tipping in England*, commended the efforts of McDonalds, for example, for encouraging daily litter picking by its employees in the vicinity of its premises.¹⁴⁷ Similarly, Restormel Borough Council in Newquay, run a seasonal voluntary code for local businesses that sign an agreement and commit to clear up litter near their premises.¹⁴⁸ Furthermore, under that scheme, nightclubs in Newquay that hand out leaflets and which are subsequently dropped by their customers, are asked to fund the first hour of the salary of a cleaner to pick up the leaflets throughout the summer season. The operative apparently wears a vest reading 'Sponsored by Newquay Nightclubs'. These are just a few examples, but there are many more examples from around the country of businesses organising voluntary litter picking events or providing equipment for litter picking in their local areas.

■ Coordination between local authorities and businesses

An area of cooperation proving to be controversial involves local authorities working with the Tobacco industry. While such cooperation could have benefits in helping to remove the litter generated by smoking, generally local authorities are hesitant to work with tobacco firms because they do not wish to be seen as supporting



smoking. A Select Committee suggested that where such cooperation does occur local authorities must make it very clear that these activities should not indicate support for the industry, nor should the industry be allowed to publicise their contribution to the joint project or use it to promote tobacco consumption.¹⁴⁹

7.5 Education and advertisements

200. Whatever the root cause of the litter problem in England and Wales, education and advertisements could be further used to address societal attitudes towards littering. Work needs to be undertaken to emphasise littering as being harmful to the environment, to society and to health. Braintree District Council, for example, is well known for its campaigns. It emphasises education through public campaigns and school visits, and subsequent 'enforcement' through a zero-tolerance approach towards individuals caught dropping litter.¹⁵⁰
201. Indeed, enhancing education and awareness forms a central plank of the Government's Litter Strategy. It promises that the Government will 'work with teachers themselves and subject associations to review existing teaching resources, make sure that they meet teachers' needs and are easily accessible to them'.¹⁵¹ Furthermore, the Government recognises that the National Citizen Service, the Scouts Association, and other organisations working with young people are important drivers of behavioural change in discouraging littering and raising awareness of the environmental and economic costs of dropping litter.
202. The UK Government has teamed up with UN Environment (UNEP) and the global scouting movement in order to try to enthuse young persons around the globe to take practical steps to reduce the use of plastics. The initiative

launched a Plastic Tide Turners toolkit for scouts. The idea is that it will teach them about how plastic threatens life in the oceans and on land.

203. The Government also promises a new national anti-littering campaign, which will be led by Government, and indicates that it will be specifically designed to appeal to young people.¹⁵² Furthermore, in its *25 Year Plan to Improve the Environment*, the Government proposes that the campaign will be funded by the private sector.¹⁵³ Indeed, to start the process, in the *25 Year Plan*, the Government announced the launch of a new litter Innovation Fund of £450,000 designed to pilot, implement and evaluate small scale local research projects that have the potential for wider application.¹⁵⁴
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7.6 Surveillance cameras

204. The controversial use of surveillance procedures under the 2000 Regulation of Investigatory Powers Act for use in detecting and prosecuting for minor offences, such as littering and dog fouling, has now been ruled out by Government.¹⁵⁵
205. Although targeted surveillance of suspected litterers is no longer permitted, one potential way of addressing the litter problem is to place surveillance cameras in litter 'hot spots'. This approach could include, for example, city or town centres, areas near to football stadiums, or areas alongside major country roads. If nothing else, the presence of surveillance cameras may have a preventative effect in deterring would-be litterers.¹⁵⁶ One concern regarding the use of surveillance, however, as considered above, is the potential for abuse of power.
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7.7 Volunteers and community clean-up events

206. There are a large number of clean-up events and clean-up campaigns organised across the country, including national campaigns, such as the Great British Spring Clean (organised by Keep Britain Tidy). Often these programmes are run by volunteers, with financing and key organisation facilitated by district and borough councils. The 'Love Essex' campaign, for example, is organised at the county level. The *Capital Clean Up project* in London is led by the Mayor of London and supported by McDonalds. Community Clean-up Toolkits, providing advice on how to run a litter picking event are also available to organisers through the project. The toolkits include a £50 voucher for the purchase of items, such as paints, plants, equipment, litter-grabbers, refuse bag hoops, heavy-duty gloves, and high visibility vests. Grants of between £500 and £1,500 are available to groups organising litter picking events.
207. In addition to local authorities, there is a wide range of community groups, individuals and businesses who also organise a large number of voluntary litter picking activities. Voluntary litter picking activities help to generate community spirit and to change behaviours. These volunteer-led actions also help the local authority to meet its litter clearance duties. Yet, despite acknowledging the reduced government funding available to councils, they should not over-rely on such volunteers to fulfil their duties. Finally, reliance on volunteering also appears to create a 'post-code lottery' of litter picking with evidence suggesting that more affluent areas are able to recruit and organise more voluntary litter picking events than less affluent areas.
208. There are also some issues of concern, however, in regards to volunteer litter picking.

In particular, litter picking often raises health and safety issues, and so groups organising such events need to be aware of their obligations to the participants and take safety precautions.

7.8 Investment in technology

209. Science is constantly developing at an incredible rate, and, thus, new technological developments may help to address the problems created by litter. For example, recent news reports show the invention of a device that safely clears plastic litter and debris from the sea.¹⁵⁷ Due to the scale of ocean-borne plastics, such an invention is clearly a very positive development. Government and business should, therefore, invest in research and design related to improving litter collection methods.
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7.9 Mapping of Ownership

210. The difficulty of determining which private individual or private or public organisation owns relevant land leads to delay in bringing action to clear litter.
211. There are many examples throughout the country of stretches of land covered in litter, or areas which are deliberately used as a dumping ground for waste. This is particularly so where the challenges in establishing ownership of the land has led to a delay in the process of clearing up litter in the past. Assistance, however may be forthcoming from such initiatives as the website, 'Who Owns England?'¹⁵⁸ As its name suggests, the website is designed to help people identify the owners of particular land, and, consequently, could help in the enforcement of litter clearing obligations.



8. Wales

8.1 Background

212. Wales is subject to largely the same criminal law obligations and actions of local authorities as outlined above. This section will detail some additional actions taking place in Wales to help reduce litter.
213. Wales has a system of ‘conferred powers devolution’, which means that the Welsh Assembly can only legislate if powers for that subject area have been specifically devolved to it under Schedule 7 of the 2006 Government of Wales Act. One of the currently devolved subject areas relates to the environment. In contrast, the Scottish Parliament and Northern Ireland Assembly, both have a ‘reserved powers’ model of devolution and can legislate in any area unless specifically excepted.

8.2 Legislation

214. The 2015 Well-being of Future Generations (Wales) Act, whilst not specifically directed at preventing litter, introduced a ‘sustainable development principle’ into the law. This principle guides public decision making, and aims to improve the social, economic, environmental and cultural well-being of Wales. Public bodies are required to consider long-term environmental issues and to work better with people and communities and each other. The Act calls for a more joined-up approach between public bodies. All of these obligations could equally apply to solving littering problems.
215. The 2015 Act also established the creation of Public Services Boards (PSBs) for each local authority area in Wales. The Act tasks each PSB to improve the economic, social, environmental and cultural well-being of its area by working to achieve the well-being goals set out in the Act.
216. In addition, the Act established a statutory Future Generations Commissioner for Wales,

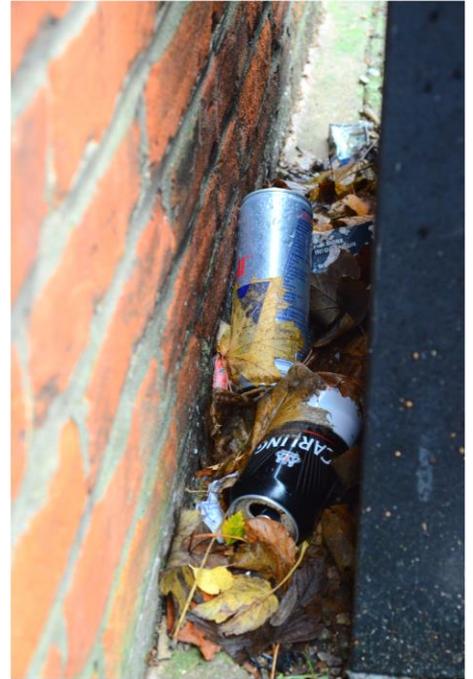
whose role is designed, amongst other things, to support public bodies to work towards achieving the well-being goals. The first Future Generations Commissioner took office in February 2016 and has produced several tools to measure her office’s progress towards the well-being objectives set out in the Act.

217. Enforcement of the obligations in the Act is mainly through the Future Generations Commissioner, who can advise, promote and encourage public bodies and PSBs; research how public bodies are implementing, amongst other things, the sustainable development principle; conduct reviews into how public bodies are taking account of the long-term impact of their decisions, and make recommendations based on the findings. Individual enforcement would be through a judicial review claim challenging the decisions of the Future Generations Commissioner and PSBs.
218. The 2016 Environment (Wales) Act establishes planning and management obligations for Wales over its ‘natural resources’. Wales clearly enjoys a large range of natural resources that fall under the provisions of the Act. However, rather disappointingly, although litter clearly does affect natural resources, such as parks and open spaces, the Act lacks specific provisions to deal with littering.

8.3 Policy

219. The policy of the Welsh Government is to use four main approaches to dealing with litter, namely education; partnership; local environmental quality improvement projects and fixed penalty notices. The National Assembly for Wales, for example, has recently emphasised the need to take measures to address litter generated by plastic and its impact on marine and aquatic environments.¹⁵⁹

220. In 2017, the Welsh Government formed the Clean Seas Partnership with NGOs and conservation organisations. Together these bodies developed Wales's first Marine Litter Action Plan (2018-2020). The action plan aims to help tackle marine litter with a series of research-informed actions deliverable over a three-year period. In doing so, the Welsh Government aims to maintain or achieve 'Good Environmental Status' in the marine environment by 2020 (see the EU Marine Strategy Framework Directive). Leading on the project is the newly created 'Marine Litter Task Group'.
221. The Welsh Government has also piloted a Litter Programme for the Coast, which encourages community action and a Local Environment Quality Action Plan. Returning to the issue of litter on land, the Welsh Government also runs a *Tidy Towns initiative*, which provides funding for community groups, local authorities and *Keep Wales Tidy* to make areas cleaner, tidier and safer. The Welsh Government also belongs to the Chewing Gum Action Group, which organises campaigns to reduce chewing gum litter.
222. With regards to education, funding is provided via *Keep Wales Tidy* to the Eco-Schools initiative, which is an international initiative encouraging school pupils to engage with environmental and sustainable development issues.
223. Consequently, the Welsh Government appears to have a clear policy framework in place to tackle litter issues, and is coordinating a range of initiatives to this effect.





9. International law (including European Union law)

9.1 European Union Law

224. Recognising that the United Kingdom left the European Union on January 31, 2020 it remains to be seen what place European Union laws and obligations will have in the UK beyond the transition period. This section is, therefore, based on EU legal obligations more generally.
225. Although the EU has competence to legislate on environmental matters it has passed little legislation in relation to littering that concerns only land, probably because this type of littering lacks a cross-border dimension. Most legislation that does exist, therefore, relates to marine litter where this cross-border dimension to the problem is most apparent. Most of the relevant legislation is highly technical and relates to issues such as financial support for litter collection.

9.1.1 Litter equipment on board vessels

226. Fishermen are encouraged to collect litter from the sea and store it on board their vessels until it can be deposited in special facilities in port.¹⁶⁰ This approach forms part of a sustainable fisheries framework, which helps protect and restore marine biodiversity and ecosystems. Importantly, the law allows fishermen who undertake marine litter removal to recover the cost of the equipment necessary for their vessels for the collection and storage of litter. These costs are currently recoverable from the European Maritime and Fisheries Fund (EMFF). Similarly, port authorities are also able to recover the costs of installing facilities at fishing ports to store and recycle marine litter.

9.1.2 Measures to protect the marine environment

227. In 2008, the EU established a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive).¹⁶¹ The Directive required states to achieve or maintain 'good environmental status' in the marine environment by 2020. Indeed, one indicator for determining whether the standard of 'good (marine) environmental status' has been met relates specifically to marine litter – namely, that the 'properties and quantities of marine litter do not cause harm to the coastal and marine environment'. As early as 2013, however, it was already recognised that the Directive's target to achieve 'good (marine) environmental status' by 2020 was coming under 'severe pressure', due to marine litter, among other causes, such as pollution, overfishing, and the effects of global warming.¹⁶²
228. Due to growing awareness of the volume of plastics in the marine environment, in January 2018 the EU Commission adopted a Strategy for Plastics,¹⁶³ which sets out three main areas of action. Pollution of the seas from plastics and microplastics is one of these three main areas, and in fact, most of the proposed actions relate to marine litter. The Strategy document highlights that 'plastic waste from European sources ends up in particularly vulnerable marine areas, such as the Mediterranean Sea and parts of the Arctic Ocean'. The Strategy sets out a vision for a circular plastics economy and one approach suggested is to reduce the production of single-use plastics. Other approaches suggested include the use of deposit return schemes, educational campaigns, projects to clean up beaches and 'extended producer responsibility schemes'. Thus, the main actions to curb the incidence of



marine litter, including plastics, are clearly the same as those intended to reduce land-based litter. The reasoning for this overlap, of course, is that land-based sources of litter provide the largest contribution to litter found in the marine environment.

229. Helping to achieve the goals of the Marine Strategy Framework Directive, the Welsh Government (as shown earlier) has worked with conservation partners to produce a Marine Litter Action Plan (see Section 8 of the current report).
230. The EU also adopted an Integrated Maritime Policy, which covers a number of cross-cutting issues, such as marine data and knowledge, and maritime spatial planning. To promote the further development and implementation of the integrated maritime policy, in 2011 the EU created a programme of work. Naturally, one objective of the programme is the protection of the marine environment, and Article 3(3)(a) refers specifically to litter. Article 3(3)(a) establishes that the programme shall 'support the protection and preservation of the marine and coastal environment, as well as prevent and reduce inputs to the marine environment, including marine litter, with a view to phasing out pollution'.¹⁶⁴

9.1.3 Plastic carrier bags

231. In 2015 the EU recognised that:

'the current consumption levels of plastic carrier bags result in high levels of littering and an inefficient use of resources and are expected to increase if no action is taken. Littering of plastic carrier bags results in environmental pollution and aggravates the widespread problem of litter in water bodies, threatening aquatic eco-systems worldwide'.¹⁶⁵

Pre-dating this recognition, however, Wales had already implemented a five-pence carrier bag charge in 2011, as a measure designed to

reduce the use of single-use plastic bags. England later followed suit in 2015, although only applying the mandatory charge to large retail stores.

9.2 International law

232. The UK is bound by international treaty law obligations, which it has joined. Specifically relating to the marine environment, for example, the United Kingdom is a treaty party to the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (the 'OSPAR Convention'), which includes the North Sea and the English Channel, the Celtic Seas and the North-East Atlantic Ocean around the UK.
233. The OSPAR Convention establishes 'a regional seas protection regime', and, again, one area of focus is naturally on marine pollution. The Convention construes marine pollution to include litter and irrespective of whether or not that litter came from the land. Data collected in the OSPAR area, again, shows that plastic is the main marine litter problem accounting for 90% of the items found on some beaches.¹⁶⁶
234. The OSPAR objective with regard to marine litter is laid down in the Strategy for the Protection of the Marine Environment of the North-East Atlantic for the years 2010-2020, and is stated as being 'to substantially reduce marine litter in the OSPAR maritime area to levels where properties and quantities do not cause harm to the marine environment'.¹⁶⁷ This objective is in line with the EU's Marine Strategy Framework Directive (above).
235. The monitoring bodies under the OSPAR Convention use the definition of marine litter provided by United Nations Environment (UNEP), such that:

'Marine litter (marine debris) is any persistent, manufactured or processed solid material discarded, disposed of, abandoned or lost in the marine and coastal environment. This also



includes such items entering the marine environment via rivers, sewage outlets, storm water outlets or winds'.¹⁶⁸

236. In 2014, and in furtherance of their shared objectives, the OSPAR parties agreed a Regional Action Plan (RAP) for Marine Litter for the period extending to 2021. This RAP contains 55 collective and national actions, which are designed to address both land-based and sea-based sources of litter, as well as to provide education, outreach and removal actions. The key action areas addressed in the RAP include the following:

- Port Reception Facilities
- Waste from fishing industry
- Fines for littering at sea
- Fishing for litter (where fishermen bag litter found in their nets and dispose of it in special receptacles at port)
- Abandoned and lost fishing gear
- Floating litter hotspots
- Education and outreach
- Improved waste management
- Sewage/storm water run-off
- Reduction of single use items
- Removal of micro plastics from products/zero pellet loss
- Redesign of harmful products

237. Moving beyond the OSPAR region, in 2017, UN Environment launched its Clean Seas campaign, specifically focused on reducing plastic pollution entering the oceans. Under the Campaign, states are urged to legislate in order to reduce the use of single-use plastics and encourage industry to minimise plastic packaging.

238. Furthermore, in a recent non-binding Resolution by the United Nations Environment Assembly, entitled, *Toward a Pollution Free Planet*,¹⁶⁹ all UN member states were encouraged to 'prioritize where feasible clean-

up in the marine environment in areas where marine litter poses a significant threat to human health, biodiversity, wildlife or sustainable use and can be conducted cost-effectively and without harm to the ecosystems'.¹⁷⁰ Importantly, the UK Government recognised this obligation in its 25 Year Plan.¹⁷¹

9.3 The European Convention on Human Rights

239. There are several human rights under the European Convention on Human Rights (ECHR), which may have relevance in the context of litter. The most relevant Convention right, however, is Article 8 of the ECHR, which protects the right to private life and home. Jurisprudence under Article 8 has expanded the provision to incorporate claims of harm to persons and enjoyment of property due to environmental pollution, including noise pollution. In the case of *Hatton and Others v. UK*¹⁷² the issue was the noise and sleep disturbance caused to residents living close to Heathrow Airport from night flights. The European Court of Human Rights stated that:

'Article 8 protects the individual's right to respect for his or her private and family life, home and correspondence. There is no explicit right to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8'.¹⁷³

240. Despite holding in *Hatton* that there was 'no explicit right to a clean and quiet environment',¹⁷⁴ the Court later held in *Di Sarno and Others v. Italy*¹⁷⁵ that there is a 'right to live in a safe and healthy environment'¹⁷⁶ and that, 'Article 8 may be relied on even in the absence of any evidence of a serious danger to people's health'.¹⁷⁷ In *Moreno Gomez v. Spain*¹⁷⁸ the Court elaborated that while Article 8 aims to protect individuals from the interference of



public authorities, it may also require state intervention to protect individuals from the acts of third parties,¹⁷⁹ essentially by legislating on environmental matters:

‘Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities adopting measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves... Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants’ rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole’.¹⁸⁰

In *Kyrtatos v. Greece*¹⁸¹ the European Court of Human Rights explained that:

‘...the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by paragraph 1 of Article 8 is the existence of a *harmful effect on a person’s private and family sphere* and not simply the general deterioration of the environment. Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect’.¹⁸²

241. Currently, a court in the United Kingdom deciding a human rights case must take into account these decisions. If the court feels that any legislative provision of the UK is incompatible with the Convention rights and it

is impossible for the court to interpret the UK legislation in such a way as to make it accord with the Convention then all that the court can do is declare that UK law is incompatible with the Convention. It is then for the UK Parliament to decide whether to change UK law. Special fast-track procedures are available if it decides to do so, but if it chooses not to do so the UK will be in breach of its treaty obligations under the ECHR.

242. While this is a potential avenue for redress, it is, however, unlikely that a littering case in England and Wales will breach the Convention obligation under Article 8 unless the local authorities were quite severely underperforming their clearance role and there were consequent significant health implications for individuals.



10. Financial Cost of Clearing Litter

10.1. Litter removal financial flow

243. The costs involved in the clearance of litter include those for the employment of staff and any private contractors, as well as equipment and other street cleansing costs. There are two main aspects to the mapping of the financial costs of litter: first, how much does it cost local authorities to remove litter, and, secondly, how is litter removal being funded (i.e. how that funding flows from government/national bodies/agencies to the county/local level and to the various actors).
244. There are many litter removal authorities, for example district and borough councils, National Park authorities, Highways England and statutory undertakers, such as Network Rail. Collectively, English local authorities are spending in the region of £791 million annually on street cleaning. That is a significant expenditure by local authorities. Highways England also estimates that it spends £6 million a year to keep England's motorways free of litter.¹⁸³ These figures are clearly not inconsequential sums.
245. Some financial data on litter is available, but its scope varies depending on the council. Some local authorities that we contacted through freedom of information requests did provide detailed accounts of their annual costs for clearing litter and fly-tipped waste, complete with a breakdown of the costs for employing staff and private contractors, purchase of equipment and other costs. Other local authorities, which were unable to provide such detailed breakdown of figures, referred instead to publicly-available budget documents. In the latter cases, litter and fly-tipped costs were often bundled within a larger category of costs, and so were less precise in how they outlined litter clearance related costs. In addition, for some litter authorities, such as Network Rail and train companies, there is a lack of any available financial information on how much it costs to remove litter from their designated areas.
246. Our research found that while county councils play a limited role in the actual clearance of litter, these bodies do provide much needed funding for large-scale anti-littering campaigns, such as the 'Love Essex' campaign. County councils also provide more small-scale grants to volunteer groups for litter picking activities.
247. Council funding is distributed down to each layer of local government. At the lowest level of local government, namely at parish council level, we found that there is a dependence on routine road sweeps from district and borough councils to clear the bulk of litter from roads and related areas, but that, in addition, some parish councils also employ their own litter pickers. Litter pickers are paid from the parish council budget, which is allocated to them by the district and borough councils. Parish councils have the discretion to choose what to prioritise in terms of their spending, and clearly some parish councils see the need to invest in additional litter clearance activities.
248. Council interviewees cited funding cuts as a significant problem generally, and as a key reason why litter is not being addressed. The councils with whom we spoke, particularly relayed the strain on existing council tax revenue. In relation to litter removal costs, we were told that the problem of fly-tipped waste is becoming increasingly expensive for councils to deal with. In particular, the removal of fly-tipped waste accounts for a significant portion of the budget of district and borough councils. Often, fly-tipped waste is also dangerous, such as asbestos, and the costs of removing it increases further, thus impacting on already highly-strained public budgets.



249. It has been possible to obtain some quantitative data on costs for the clearance of litter and fly-tipped waste in districts in the county of Essex. Table 1 gives the total expenditure provided by a number of district and borough councils in Essex, together with some identified costs for particular activities. Note that where private contractors and employees have other functions in addition to clearing rubbish (e.g. general road maintenance), it can be difficult to identify the precise amount that it costs district and borough councils to clear litter and fly-tipped waste.
250. Only one council, Basildon District Council, was able to provide a detailed breakdown of expenditure on litter and fly-tipped waste removal (see Table 2). Here the total income

recorded was £812,216.59, and the net cost of the service amounts to £1,541,175.39.

251. As regards the costs associated with the clearance of roads, Essex County Council has a contract with County Route to clear litter on, and undertake other responsibilities in relation, to the A130 (approximately 30 miles of highway in Essex). The cost of these services for the financial year 2015/16 was said to be £12.78 million.
252. Consequently, the high costs of clearing litter from roads and other spaces demonstrate the importance of investing in strategies to reduce litter.

Table 1

District Council	Employee cost	Vehicle cost	Private contractors	Hazardous waste removal	Annual Expenses for Litter/ Fly-tipped Waste
Basildon	£1,467,455.98	£15,558.27			£2,353,391.58
Maldon	£85,500				£2,353,391.98
Brentwood	£515,646	£130,596		£15,000	£1,609,522.00
Braintree				£24,930	£1,351,037.00
Tendring			£1,489,402		£1,489,402.00
Epping					£1,120,481.58
Thurrock	£967,000		£11,000		£990,000
Rochford			£80,000		£80,000

Table 2

Employee cost	Vehicle cost	Premises	supplies	Third party payment	Support costs	Capital charges
£1,467,455.98	£15,558.27	£15,558.27	£157,169.50	£83,793.23	£218,000	£1,900



253. Evidently, there is variable practice in the transparency of financial data produced by local authorities for litter removal. For greater transparency, and more consistency of practice, all councils should produce an annual public report providing a detailed breakdown of costs spent in clearing litter and fly-tipped waste.
254. In particular, it would be useful if district and borough councils could specify in the budget line of employing in-house staff and private contractors the proportion of those costs that are attributable to anti-littering duties as opposed to other duties that these agents perform. There is no information providing for a breakdown of these roles and approximately how much time members of staff spend on their litter-clearing duties as opposed to other duties. This information would facilitate a more accurate estimate of the costs of dealing with litter and would improve financial accountability of district and borough councils.

10.2. Sources of funding

255. As mentioned above, district and borough councils set their budget each year for street cleaning. Within that budget, costs are allocated to cover: salaries for members of staff and private contractors, the purchase of equipment needed for litter removal (e.g. black bags, litter grabbers, high visibility vests) and the purchase, hire and maintenance of vehicles for removal of litter (e.g. vans and waste trucks). Some district and borough councils employ only in-house staff, while others use both in-house staff and private contractors for the purposes of removing litter. We learned that some of the personnel concerned spend only a fraction of their time on litter removal activities, and may have additional, non-litter related roles to perform. Some staff, on the other hand, are full-time, such as wardens, and some teams are large and set various output targets for themselves, such as 'response times'.
256. District and borough councils receive funding from the county council, and are also able to generate income from a number of sources, such as litter-related fines (eg FPNs), revenue from festivals, business promotions, service charges from parishes and 'new homes bonuses'. The New Homes Bonus is a Government scheme that encourages local authorities to grant planning permission for the building of new homes and in doing so it provides a source of revenue, or 'bonus', for local authorities.
257. Practice among councils varies, with some using income from new homes bonuses and these other sources to go straight into the main budget, whereas others organise their budgets in such a way that these additional sources of funding are used to directly fund anti-littering campaigns and activities.
258. In terms of income generation, the levying of FPNs for littering is one possible source of revenue for local authorities. Our research demonstrated that some local authorities impose almost no fines for littering, while others have imposed thousands per year (Appendix I).
259. For its part, DEFRA has emphasised that there should be 'proportionate enforcement'¹⁸⁴ and that the litter strategies of councils, which may include the use of FPNs, should not be based on targets or be used as a revenue generator.¹⁸⁵ According to DEFRA, the income generated by FPNs (including FPNs for littering) for district, borough and unitary councils is relatively low. For example, DEFRA found that in 2008/9, 179 councils reported issuing 45,076 FPNs (not all of which were for littering). Generating a total income of £1.88m, £1.33m of which came from FPNs issued for littering.¹⁸⁶
260. Going one stage further, the Government has considered whether the revenue generated



from FPNs for littering offences should be ring-fenced for street cleansing activities.¹⁸⁷

Consequently, in the recent DEFRA Code of Practice on Litter and Refuse (2019)¹⁸⁸ a welcome development was the guidance that litter penalty receipts may be spent on, 'Litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles); graffiti and fly-posting; controlling and enforcing against the unauthorised distribution of free literature.'¹⁸⁹

261. Our research found that local parish councils to date have either not been aware that they had the power to issue fines for littering, or found the training requirement to be too expensive. With increased awareness of this power and the new, less cumbersome rules on the training of such officers, it is, therefore, likely that the powers will be used more. Consequently, parish councils will be better able to tackle local litter 'hot-spots' and, thus, to better address litter problems in their own community. Clearly, the number of FPNs will also rise.

10.3. Financial commitments of campaign-related works

262. Anti-littering campaigns are a common way for both national governmental action and local community action to effect behavioural change. The 'Clean for the Queen' anti-littering campaign organised in 2016, for example, was a national event and was designed to tie in with the Queen's 90th birthday celebrations. The 'Love Essex' campaign, on the other hand, is organised at the county level, and is funded jointly by district and borough councils and Essex County Council.
263. Beyond campaigns, specific councils often work closely with business, schools, communities, individuals, local and national governments and other charities and voluntary organisations in order to reduce litter more generally, as well as improve local places. Councils also routinely

provide equipment, such as litter-grabbers, black bags and high visibility vests, to concerned citizens and to volunteer groups who wish to clear litter.

264. The funding for Colchester litter-picking events in 2016 (£10,000 x 2) was raised by the borough council from the new homes bonus. In addition, in the same year, some ten groups shared nearly £3,500 of New Homes Bonus funding to fund equipment hire and to hold community clean-up events. Colchester Borough Council, working with Colchester Community Voluntary Service (CCVS), offered grants of up to £500 to enable community groups to organise 'Clean for the Queen' activities throughout the year.
265. Keep Britain Tidy also work to support litter picking activities, and, more specifically the establishment of different Beach Care groups, including across Essex, where volunteers gather in groups to clear litter in local seaside areas affected by litter (e.g. Mersea).
266. From the above it appears that measures to tackle litter are typically short-term, such as short-term campaigns and ad hoc litter-picking events. More investment, therefore, needs to be undertaken in long-term initiatives to address the litter problem. Within Essex, a good example is provided by Braintree District Council, which has been a leading voice in the 'Love Essex' Campaign, and has taken ongoing measures of education and enforcement to tackle litter in its area.



Appendix I

Fixed Penalty Notices for Littering

Fixed Penalty Notices (FPNs) can be issued for littering under s.88 of the Environmental Protection Act 1990. The statistics below provide figures on (1) fines issued between 2016 and 2017 and (2) figures for fines issued for the five-year period (2012-2017) by district and borough councils across 14 counties.

These counties are: Essex, Kent, Leicestershire, Oxfordshire, Cumbria, Cambridgeshire, Devon, Derbyshire, Suffolk, Cornwall, Norfolk, Dorset, West Midlands and Greater Manchester.

Council	County	FPNs issued (2016-17)	FPNs issued in period (2012-2017)
Colchester	Essex	42	178
Tendring	Essex	1	3
Maldon	Essex	NOT PROVIDED ¹	49
Epping Forest	Essex	10	79
Castle Point	Essex	0	0
Basildon	Essex	3	111
Braintree	Essex	54	447
Brentwood	Essex	6	NOT PROVIDED
Chelmsford	Essex	103	931
Harlow	Essex	51	132
Rochford	Essex	0	0
Thurrock	Essex	0	0
Southend-on-Sea	Essex	1	24
Uttlesford	Essex	2	16
Ashford	Kent	1284	1284

¹ The council responded to our freedom of information request but did not provide details on one or more of the statistics we asked for.



Bexley	Kent	1365	1586
Bromley	Kent	273	8442
Canterbury City	Kent	2532	6828
Dartford	Kent	3915	3915
Dover	Kent	81	420
Gravesham	Kent	1575	3093
Maidstone	Kent	1901	13824
Medway	Kent	376	1970
Sevenoaks	Kent	0	0
Shepway	Kent	20	36
Swale	Kent	2996	4525
Thanet	Kent	3891	3893
Tonbridge and Malling	Kent	77	698
Tunbridge Wells	Kent	1683	3990
Blaby	Leicestershire	7	64
Charnwood	Leicestershire	27	333
Harborough	Leicestershire	0	7
Hinckley and Bosworth	Leicestershire	24	189
Melton	Leicestershire	0	0
N.W. Leicestershire	Leicestershire	0	41
Oadby and Wigston	Leicestershire	3	3
Cherwell	Oxfordshire	14	244
West Oxfordshire	Oxfordshire	2	30
Oxford City	Oxfordshire	5	114
South Oxfordshire	Oxfordshire	1	24
Vale of White Horse	Oxfordshire	42	178



Allerdale	Cumbria	4	33
Barrow-in-Furness	Cumbria	7	30
Carlisle	Cumbria	48	231
Copeland	Cumbria	6	118
Eden	Cumbria	3	10
South Lakeland	Cumbria	0	5
Cambridge City	Cambridgeshire	346	623
South Cambridgeshire	Cambridgeshire	13	58
East Cambridgeshire	Cambridgeshire	0	0
Huntingdonshire	Cambridgeshire	NOT PROVIDED	59
Fenland	Cambridgeshire	16	94
Exeter	Devon	0	34
East Devon	Devon	15	5
Mid-Devon	Devon	0	0
North Devon	Devon	0	0
Torridge	Devon	0	4
West Devon	Devon	0	0
South Hams	Devon	0	0
Teignbridge	Devon	13	75
Amber Valley	Derbyshire	19	92
Erewash	Derbyshire	131	995
Bolsover	Derbyshire	40	219
Chesterfield	Derbyshire	24	330
N.E. Derbyshire	Derbyshire	15	NO DATA PRE-2015 ²

² The council did not hold data prior to 2015 so could not provide a breakdown for the 5 year period.



High Peak	Derbyshire	20	81
Derbyshire Dales	Derbyshire	0	0
Babergh	Suffolk	4	22
Forest Heath	Suffolk	1	23
Ipswich	Suffolk	16	251
Mid-Suffolk	Suffolk	9	27 LAST 3 YRS ONLY ³
St. Edmundsbury	Suffolk	3	31
Suffolk Coastal	Suffolk	29	NO DATA PRE-2016 ⁴
Waveney	Suffolk	23	147
Cornwall (Unitary)	Cornwall	0	12
Breckland	Norfolk	0	11
Broadland	Norfolk	1	9
Great Yarmouth	Norfolk	11	86
King's Lynn and W. Norfolk	Norfolk	0	0
North Norfolk	Norfolk	8	19
Norwich City	Norfolk	8	45
South Norfolk	Norfolk	3	6
Weymouth and Portland	Dorset	0	0
West Dorset	Dorset	3	4
North Dorset	Dorset	0	0
Purbeck	Dorset	2	2
East Dorset	Dorset	NO RESPONSE ⁵	NO RESPONSE
Christchurch	Dorset	NO RESPONSE	NO RESPONSE

³ The council only held data for the previous 3 year period.

⁴ The council did not hold data prior to 2016 so could not provide a breakdown for the 5 year period.

⁵ The council did not respond to our freedom of information request.



Birmingham	West Midlands	6030	19253
Dudley	West Midlands	103	644
Sandwell	West Midlands	10	39
Solihull	West Midlands	0	7
Walsall	West Midlands	NOT PROVIDED	825
Wolverhampton	West Midlands	6384	18442
Salford	Greater Manchester	1838	2967
Bolton	Greater Manchester	191	1169
Stockport	Greater Manchester	1	1
Oldham	Greater Manchester	351	2245
Bury	Greater Manchester	22	23
Rochdale	Greater Manchester	4	212
Manchester City	Greater Manchester	2553	5994



Appendix II

Unpaid Fines for Littering

Fixed Penalty Notices (FPNs) can be issued for littering under s.88 of the Environmental Protection Act 1990. The statistics below provide figures on (1) unpaid fines issued between 2016 and 2017 and (2) figures for unpaid fines issued for the five-year period (2012-2017) by district and borough councils across 14 counties.

These counties are: Essex, Kent, Leicestershire, Oxfordshire, Cumbria, Cambridgeshire, Devon, Derbyshire, Suffolk, Cornwall, Norfolk, Dorset, West Midlands and Greater Manchester.

Council	County	Unpaid fines (2016-17)	Unpaid fines in period (2012-2017)
Colchester	Essex	9	25
Tendring	Essex	1	1
Maldon	Essex	NOT PROVIDED ⁶	19
Epping Forest	Essex	0	1
Castle Point	Essex	0	0
Basildon	Essex	1	14
Braintree	Essex	2	27
Brentwood	Essex	NOT PROVIDED	NOT PROVIDED
Chelmsford	Essex	15	NOT HELD ⁷
Harlow	Essex	0	0
Rochford	Essex	0	0
Thurrock	Essex	0	0
Southend-on-Sea	Essex	3	8
Uttlesford	Essex	1	1
Ashford	Kent	248	248

⁶ The council responded to our freedom of information request but did not provide details on one or more of the statistics we asked for.

⁷ The council stated that it did not hold the data we asked for even though it held other information requested via the freedom of information request.



Bexley	Kent	278	278
Bromley	Kent	103	3079
Canterbury City	Kent	577	1596
Dartford	Kent	0	0
Dover	Kent	7	67
Gravesham	Kent	546	970
Maidstone	Kent	525	3382
Medway	Kent	108	394
Sevenoaks	Kent	0	0
Shepway	Kent	5	13
Swale	Kent	1018	1445
Thanet	Kent	1262	1263
Tonbridge and Malling	Kent	20	146
Tunbridge Wells	Kent	437	870
Blaby	Leicestershire	1	16
Charnwood	Leicestershire	2	6
Harborough	Leicestershire	0	0
Hinckley and Bosworth	Leicestershire	0	13
Melton	Leicestershire	0	0
N.W. Leicestershire	Leicestershire	0	0
Oadby and Wigston	Leicestershire	3	3
Cherwell	Oxfordshire	0	30
West Oxfordshire	Oxfordshire	0	1
Oxford City	Oxfordshire		3
South Oxfordshire	Oxfordshire	0	0
Vale of White Horse	Oxfordshire	0	8



Allerdale	Cumbria	1	1
Barrow-in-Furness	Cumbria	1	11
Carlisle	Cumbria	1	23
Copeland	Cumbria	0	0
Eden	Cumbria	1	2
South Lakeland	Cumbria	0	0
Cambridge City	Cambridgeshire	23	61
South Cambridgeshire	Cambridgeshire	NOT PROVIDED	NOT PROVIDED
East Cambridgeshire	Cambridgeshire	0	0
Huntingdonshire	Cambridgeshire	0	3
Fenland	Cambridgeshire	1	11
Exeter	Devon	0	12
East Devon	Devon	0	0
Mid-Devon	Devon	0	0
North Devon	Devon	0	0
Torridge	Devon	0	0
West Devon	Devon	0	0
South Hams	Devon	0	0
Teignbridge	Devon	0	0
Amber Valley	Derbyshire	4	14
Erewash	Derbyshire	13	157
Bolsover	Derbyshire	0	0
Chesterfield	Derbyshire	1	1
N.E. Derbyshire	Derbyshire	8	NO DATA PRE-2015 ⁸

⁸ The council did not hold data prior to 2015 so could not provide a breakdown for the 5 year period.



High Peak	Derbyshire	0	6
Derbyshire Dales	Derbyshire	0	0
Babergh	Suffolk	0	0
Forest Heath	Suffolk	0	1
Ipswich	Suffolk	1	9
Mid-Suffolk	Suffolk	0	2
St. Edmundsbury	Suffolk	0	8
Suffolk Coastal	Suffolk	NOT HELD	NOT HELD
Waveney	Suffolk	2	26
Cornwall (Unitary)	Cornwall	0	0
Breckland	Norfolk	0	4
Broadland	Norfolk	0	0
Great Yarmouth	Norfolk	0	0
King's Lynn and W. Norfolk	Norfolk	0	0
North Norfolk	Norfolk	0	2
Norwich City	Norfolk	1	2
South Norfolk	Norfolk	0	0
Weymouth and Portland	Dorset	NOT PROVIDED	NOT PROVIDED
West Dorset	Dorset	0	0
North Dorset	Dorset	0	0
Purbeck	Dorset	0	1
East Dorset	Dorset	NO RESPONSE ⁹	NO RESPONSE
Christchurch	Dorset	NO RESPONSE	NO RESPONSE
Birmingham	West Midlands	1061	NOT HELD

⁹ The council did not respond to our freedom of information request.



Dudley	West Midlands	44	155
Sandwell	West Midlands	0	3
Solihull	West Midlands	0	0
Walsall	West Midlands	NOT PROVIDED	140
Wolverhampton	West Midlands	2490	6444
Salford	Greater Manchester	354	301
Bolton	Greater Manchester	27	203
Stockport	Greater Manchester	0	0
Oldham	Greater Manchester	125	882
Bury	Greater Manchester	4	5
Rochdale	Greater Manchester	0	23
Manchester City	Greater Manchester	430	996



Appendix III

Fixed Penalty Notices for Littering Challenged in Court

The statistics below provide (1) figures on individual challenges to Fixed Penalty Notices (FPNs) issued for littering under s.88 of the Environmental Protection Act 1990 between 2016 and 2017 and (2) figures on court challenges to FPNs issued for littering in the five-year period (2012-2017) in 14 different counties.

These counties are: Essex, Kent, Leicestershire, Oxfordshire, Cumbria, Cambridgeshire, Devon, Derbyshire, Suffolk, Cornwall, Norfolk, Dorset, West Midlands and Greater Manchester.

Council	County	Challenges in court (2016-17)	Challenges in court in period (2012-2017)
Colchester	Essex	3	13
Tendring	Essex	0	0
Maldon	Essex	NOT PROVIDED ¹⁰	18
Epping Forest	Essex	1	1
Castle Point	Essex	0	0
Basildon	Essex	0	8
Braintree	Essex	0	12
Brentwood	Essex	0	0
Chelmsford	Essex	5	5
Harlow	Essex	NOT HELD ¹¹	NOT HELD
Rochford	Essex	0	0
Thurrock	Essex	0	0
Southend-on-Sea	Essex	1	1
Uttlesford	Essex	1	1
Ashford	Kent	NOT HELD	NOT HELD

¹⁰ The council responded to our freedom of information request but did not provide details on one or more of the statistics we asked for.

¹¹ The council stated that it did not hold the data we asked for even though it held other information requested via the freedom of information request.



Bexley	Kent	278	278
Bromley	Kent	1	9
Canterbury City	Kent	NOT HELD	NOT HELD
Dartford	Kent	369	369
Dover	Kent	0	15
Gravesham	Kent	150	288
Maidstone	Kent	46	241
Medway	Kent	0	0
Sevenoaks	Kent	0	0
Shepway	Kent	0	0
Swale	Kent	211	264
Thanet	Kent	NOT HELD	370
Tonbridge and Malling	Kent	2	29
Tunbridge Wells	Kent	250	570
Blaby	Leicestershire	0	9
Charnwood	Leicestershire	2	21
Harborough	Leicestershire	0	0
Hinckley and Bosworth	Leicestershire	0	13
Melton	Leicestershire	0	0
N.W. Leicestershire	Leicestershire	0	0
Oadby and Wigston	Leicestershire	3	3
Cherwell	Oxfordshire	0	10
West Oxfordshire	Oxfordshire	0	0
Oxford City	Oxfordshire	0	0
South Oxfordshire	Oxfordshire	0	0
Vale of White Horse	Oxfordshire	0	0



Allerdale	Cumbria	0	0
Barrow-in-Furness	Cumbria	0	0
Carlisle	Cumbria	0	0
Copeland	Cumbria	0	0
Eden	Cumbria	0	0
South Lakeland	Cumbria	0	0
Cambridge City	Cambridgeshire	NOT HELD	NOT HELD
South Cambridgeshire	Cambridgeshire	NOT PROVIDED	NOT PROVIDED
East Cambridgeshire	Cambridgeshire	0	0
Huntingdonshire	Cambridgeshire	NOT PROVIDED	3
Fenland	Cambridgeshire	0	13
Exeter	Devon	0	4
East Devon	Devon	0	0
Mid-Devon	Devon	0	0
North Devon	Devon	0	0
Torridge	Devon	0	0
West Devon	Devon	0	0
South Hams	Devon	0	0
Teignbridge	Devon	0	0
Amber Valley	Derbyshire	2	10
Erewash	Derbyshire	4	49
Bolsover	Derbyshire	NOT HELD	NOT HELD
Chesterfield	Derbyshire	ABOUT 12 PER YEAR ¹²	ABOUT 12 PER YEAR
N.E. Derbyshire	Derbyshire	2	NO DATA PRE-2015 ¹³

¹² The council was unable to provide exact figures so provided an estimate.

¹³ The council did not hold data prior to 2015 so could not provide a breakdown for the 5 year period.



High Peak	Derbyshire	0	0
Derbyshire Dales	Derbyshire	0	0
Babergh	Suffolk	0	0
Forest Heath	Suffolk	0	1
Ipswich	Suffolk	1	3
Mid-Suffolk	Suffolk	0	0
St. Edmundsbury	Suffolk	0	8
Suffolk Coastal	Suffolk	NOT HELD	NOT HELD
Waveney	Suffolk	NOT HELD	NOT HELD
Cornwall (Unitary)	Cornwall	0	1
Breckland	Norfolk	0	0
Broadland	Norfolk	0	0
Great Yarmouth	Norfolk	0	0
King's Lynn and W. Norfolk	Norfolk	0	0
North Norfolk	Norfolk	0	2
Norwich City	Norfolk	0	0
South Norfolk	Norfolk	0	0
Weymouth and Portland	Dorset	NOT PROVIDED	NOT PROVIDED
West Dorset	Dorset	0	0
North Dorset	Dorset	0	0
Purbeck	Dorset	0	0
East Dorset	Dorset	NO RESPONSE ¹⁴	NO RESPONSE
Christchurch	Dorset	NO RESPONSE	NO RESPONSE
Birmingham	West Midlands	NOT HELD	NOT HELD

¹⁴ The council did not respond to our freedom of information request.



Dudley	West Midlands	NOT HELD	NOT HELD
Sandwell	West Midlands	0	0
Solihull	West Midlands	0	0
Walsall	West Midlands	NOT PROVIDED	17
Wolverhampton	West Midlands	116	177
Salford	Greater Mancheste	0	0
Bolton	Greater Mancheste	8	44
Stockport	Greater Mancheste	0	0
Oldham	Greater Mancheste	NOT CODED ¹⁵	NOT CODED
Bury	Greater Mancheste	0	0
Rochdale	Greater Mancheste	EXEMPT UNDER S12 ¹⁶	EXEMPT UNDER S12
Manchester City	Greater Mancheste	0	0

¹⁵ The council stated that this was not coded.

¹⁶ The council indicated that it was exempt from providing a response.



Appendix IV

Use of Community Protection Notices

Under s.43 of the Anti-social Crime, Behaviour and Policing Act 2014, authorised persons have the power to issue Community Protection Notices (CPNs). CPNs provide sanctions for ‘unreasonable’ conduct which has a negative impact on a community’s quality of life. Fixed Penalty Notices (FPNs) can be issued by authorised persons under s.52 of the Anti-Social Crime, Behaviour and Policing Act 2014 for non-compliance with a CPN.

The statistics below provide (1) figures on the use of CPNs between 2016 and 2017 and (2) figures on the number of FPNs which have been issued by district and borough councils for non-compliance with CPNs in 14 different counties. These counties are: Essex, Kent, Leicestershire, Oxfordshire, Cumbria, Cambridgeshire, Devon, Derbyshire, Suffolk, Cornwall, Norfolk, Dorset, West Midlands and Greater Manchester. The majority of the CPNs were not issued for littering with most councils expressing a reluctance to use CPNs for this purpose.

Council	County	Use of CPNs (2016-17)	Non-compliance fines issued for CPNs
Colchester	Essex	0	0
Tendring	Essex	0	0
Maldon	Essex	0	0
Epping Forest	Essex	4	0
Castle Point	Essex	0	0
Basildon	Essex	0	0
Braintree	Essex	35	6
Brentwood	Essex	2	0
Chelmsford	Essex	20	20
Harlow	Essex	0	0
Rochford	Essex	0	0
Thurrock	Essex	Under 5 ¹⁷	0
Southend-on-Sea	Essex	0	0
Uttlesford	Essex	2	0
Ashford	Kent	2	0
Bexley	Kent	2	0

¹⁷ The council stated it had used under 5 CPNs.



Bromley	Kent	0	0
Canterbury City	Kent	0	0
Dartford	Kent	4	4
Dover	Kent	10	10
Gravesham	Kent	1	0
Maidstone	Kent	15	3
Medway	Kent	20	4
Sevenoaks	Kent	10	10
Shepway	Kent	17	6
Swale	Kent	3	3
Thanet	Kent	5	5
Tonbridge and Malling	Kent	2	2
Tunbridge Wells	Kent	0	0
Blaby	Leicestershire	3	0
Charnwood	Leicestershire	28	1
Harborough	Leicestershire	3	0
Hinckley and Bosworth	Leicestershire	0	0
Melton	Leicestershire	0	0
N.W. Leicestershire	Leicestershire	0	0
Oadby and Wigston	Leicestershire	5	5
Cherwell	Oxfordshire	0	0
West Oxfordshire	Oxfordshire	1	0
Oxford City	Oxfordshire	56	23
South Oxfordshire	Oxfordshire	2	0
Vale of White Horse	Oxfordshire	46	0
Allerdale	Cumbria	0	0
Barrow-in-Furness	Cumbria	0	0
Carlisle	Cumbria	0	0
Copeland	Cumbria	0	0
Eden	Cumbria	1	1



South Lakeland	Cumbria	0	0
Cambridge City	Cambridgeshire	1	0
South Cambridgeshire	Cambridgeshire	NOT PROVIDED	NOT PROVIDED ¹⁸
East Cambridgeshire	Cambridgeshire	0	0
Huntingdonshire	Cambridgeshire	27	5
Fenland	Cambridgeshire	0	0
Exeter	Devon	13	15
East Devon	Devon	0	0
Mid-Devon	Devon	8	3
North Devon	Devon	12	5
Torridge	Devon	6	0
West Devon	Devon	0	0
South Hams	Devon	0	0
Teignbridge	Devon	0	0
Amber Valley	Derbyshire	0	0
Erewash	Derbyshire	0	0
Bolsover	Derbyshire	62	13
Chesterfield	Derbyshire	6	1
N.E. Derbyshire	Derbyshire	8	2
High Peak	Derbyshire	8	1
Derbyshire Dales	Derbyshire	2	1
Babergh	Suffolk	0	0
Forest Heath	Suffolk	0	0
Ipswich	Suffolk	21	0
Mid-Suffolk	Suffolk	0	0
St. Edmundsbury	Suffolk	0	0
Suffolk Coastal	Suffolk	0	0
Waveney	Suffolk	3	0

¹⁸ The council responded to our freedom of information request but did not provide details on one or more of the statistics we asked for.



Cornwall (Unitary)	Cornwall	1	1
Breckland	Norfolk	0	0
Broadland	Norfolk	0	0
Great Yarmouth	Norfolk	35	7
King's Lynn and W. Norfolk	Norfolk	0	0
North Norfolk	Norfolk	3	0
Norwich City	Norfolk	1	0
South Norfolk	Norfolk	3	0
Weymouth and Portland	Dorset	NOT PROVIDED	NOT PROVIDED
West Dorset	Dorset	0	0
North Dorset	Dorset	0	0
Purbeck	Dorset	0	0
East Dorset	Dorset	NO RESPONSE ¹⁹	NO RESPONSE
Christchurch	Dorset	NO RESPONSE	NO RESPONSE
Birmingham	West Midlands	1	1
Dudley	West Midlands	0	0
Sandwell	West Midlands	0	0
Solihull	West Midlands	3	2
Walsall	West Midlands	0	0
Wolverhampton	West Midlands	137	3
Salford	Greater Manchester	8	0
Bolton	Greater Manchester	6	0
Stockport	Greater Manchester	1	0
Oldham	Greater Manchester	25	1
Bury	Greater Manchester	NOT PROVIDED	NOT PROVIDED
Rochdale	Greater Manchester	0	0
Manchester City	Greater Manchester	25	4

¹⁹ The council did not respond to our freedom of information request.



Appendix V

Use of Public Space Protection Orders

Under s.59 of the Anti-social Crime, Behaviour and Policing Act 2014, authorised persons have the power to issue Public Space Protection Orders (PSPOs). PSPOs provide sanctions for ‘activities’ carried out in a public place, likely to have a ‘detrimental’ effect. Fixed Penalty Notices (FPNs) can be issued by authorised persons under s.68 of the Anti-social Crime, Behaviour and Policing Act 2014 for non-compliance with a PSPO.

The statistics below provide (1) figures on the use of PSPOs between 2016 and 2017 and (2) figures on the number of FPNs which have been issued by district and borough councils for non-compliance with PSPOs in 14 different counties. These counties are: Essex, Kent, Leicestershire, Oxfordshire, Cumbria, Cambridgeshire, Devon, Derbyshire, Suffolk, Cornwall, Norfolk, Dorset, West Midlands and Greater Manchester. The majority of the PSPOs were not issued for littering with most councils expressing a reluctance to use PSPOs for this purpose.

Council	County	Use of PSPOs (2016-17)	Non-compliance fines issued for PSPOs
Colchester	Essex	0	0
Tendring	Essex	1	9
Maldon	Essex	0	0
Epping Forest	Essex	0	0
Castle Point	Essex	0	0
Basildon	Essex	0	0
Braintree	Essex	0	0
Brentwood	Essex	0	0
Chelmsford	Essex	2	73
Harlow	Essex	0	0
Rochford	Essex	0	0
Thurrock	Essex	Under 5 ²⁰	12
Southend-on-Sea	Essex	0	0
Uttlesford	Essex	0	0
Ashford	Kent	1	0

²⁰ The council stated it had used under 5 PSPOs.



Bexley	Kent	1	18
Bromley	Kent	0	0
Canterbury City	Kent	0	0
Dartford	Kent	0	0
Dover	Kent	1	72
Gravesham	Kent	1	17
Maidstone	Kent	0	0
Medway	Kent	0	0
Sevenoaks	Kent	0	0
Shepway	Kent	2	0
Swale	Kent	0	0
Thanet	Kent	0	0
Tonbridge and Malling	Kent	0	0
Tunbridge Wells	Kent	0	0
Blaby	Leicestershire	1	0
Charnwood	Leicestershire	1	7
Harborough	Leicestershire	0	0
Hinckley and Bosworth	Leicestershire	1	0
Melton	Leicestershire	0	0
N.W. Leicestershire	Leicestershire	0	0
Oadby and Wigston	Leicestershire	0	0
Cherwell	Oxfordshire	1	1
West Oxfordshire	Oxfordshire	1	2
Oxford City	Oxfordshire	2	5
South Oxfordshire	Oxfordshire	0	0
Vale of White Horse	Oxfordshire	0	0



Allerdale	Cumbria	0	0
Barrow-in-Furness	Cumbria	0	0
Carlisle	Cumbria	1	0
Copeland	Cumbria	0	0
Eden	Cumbria	0	0
South Lakeland	Cumbria	0	0
Cambridge City	Cambridgeshire	2	18
South Cambridgeshire	Cambridgeshire	NOT PROVIDED	NOT PROVIDED ²¹
East Cambridgeshire	Cambridgeshire	0	0
Huntingdonshire	Cambridgeshire	1	1
Fenland	Cambridgeshire	0	0
Exeter	Devon	0	0
East Devon	Devon	0	0
Mid-Devon	Devon	0	0
North Devon	Devon	0	0
Torridge	Devon	0	0
West Devon	Devon	0	0
South Hams	Devon	0	0
Teignbridge	Devon	1	2
Amber Valley	Derbyshire	0	0
Erewash	Derbyshire	0	0
Bolsover	Derbyshire	3	104
Chesterfield	Derbyshire	0	0
N.E. Derbyshire	Derbyshire	1	0

²¹ The council responded to our freedom of information request but did not provide details on one or more of the statistics we asked for.



High Peak	Derbyshire	0	0
Derbyshire Dales	Derbyshire	4	1
Babergh	Suffolk	0	0
Forest Heath	Suffolk	0	0
Ipswich	Suffolk	0	0
Mid-Suffolk	Suffolk	0	0
St. Edmundsbury	Suffolk	0	0
Suffolk Coastal	Suffolk	1	0
Waveney	Suffolk	1	1
Cornwall (Unitary)	Cornwall	0	0
Breckland	Norfolk	0	0
Broadland	Norfolk	0	0
Great Yarmouth	Norfolk	1	0
King's Lynn and W. Norfolk	Norfolk	1	0
North Norfolk	Norfolk	0	0
Norwich City	Norfolk	0	0
South Norfolk	Norfolk	0	0
Weymouth and Portland	Dorset	NOT PROVIDED	NOT PROVIDED
West Dorset	Dorset	0	0
North Dorset	Dorset	0	0
Purbeck	Dorset	0	0
East Dorset	Dorset	NO RESPONSE ²²	NO RESPONSE
Christchurch	Dorset	NO RESPONSE	NO RESPONSE
Birmingham	West Midlands	14	5

²² The council did not respond to our freedom of information request.



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Dudley	West Midlands	2	0
Sandwell	West Midlands	0	0
Solihull	West Midlands	0	0
Walsall	West Midlands	9	0
Wolverhampton	West Midlands	19	7
Salford	Greater Manchester	2	0
Bolton	Greater Manchester	4	0
Stockport	Greater Manchester	1	0
Oldham	Greater Manchester	4	0
Bury	Greater Manchester	NOT PROVIDED	NOT PROVIDED
Rochdale	Greater Manchester	0	0
Manchester City	Greater Manchester	3	0



Useful Resources

Reports

Campaign to Protect Rural England, *Stop the Drop, Litter and fly-tipping: Whose problem is it anyway?* (London: CPRE, 2008)

DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006)

DEFRA, *Litter and Refuse: Guidance on Part 4 of the Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act* (London: DEFRA, 2006)

DEFRA, *Local environmental enforcement – Guidance on the use of fixed penalty notices* (London: DEFRA, 2007)

DEFRA, *Reducing litter caused by 'food on the go – A Voluntary Code of Practice for local partnerships* (London: DEFRA, 2004)

DEFRA, *Getting to grips with the Clean Neighbourhoods and Environment Act 2005 – a parish council guide to environmental enforcement* (London: DEFRA, 2006)

DEFRA, *Part 1A – Effective enforcement: Code of practice for litter and refuse* (London: DEFRA, 2019).

Government Response to the Communities and Local Government Select Committee's Seventh Report of Session 2014-15 on Litter and Fly-tipping in England Cm 9097

HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018).

HM Government, *A Litter Strategy for England* (London: DEFRA, 2017)

House of Commons Communities and Local Government Committee, *Litter and fly-tipping in England and Wales (Seventh Report of Session 2014-15)* (London: TSO, 2015)

House of Commons Library, *Commons Library Analysis of the Environment Bill 2019-20 CBP-8712* (London: House of Commons, 2019)

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The
countryside
charity

Key Legislation

1974 Control of Pollution Act

1980 Highways Act

1983 Litter Act

1990 Environmental Protection Act

2005 Clean Neighbourhoods and Environment Act

2014 Anti-social Behaviour, Crime and Policing Act

2016 Legislative and Regulatory Reform Act

2019-20 Draft Environment Bill



Endnotes

- ¹ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018).
- ² HM Government, *A Litter Strategy for England* (London: DEFRA, 2017).
- ³ DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006).
- ⁴ United Nations Environment Agency, *Towards a Pollution-Free Planet: Background Report* (UNEP, 2017) p.26.
- ⁵ <http://www.assembly.wales/research%20documents/qg15-005%20-%20marine/qg15-005.pdf>
- ⁶ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018) p.91.
- ⁷ This figure represents the total expenditure for street cleansing (not chargeable to highways) for 2016-17, Revenue Outturn appendix: Cultural, Environmental, Regulatory and Planning Services
<https://www.gov.uk/government/statistics/local-authority-revenue-expenditure-and-financing-england-2016-to-2017-individual-local-authority-data-outturn>
- ⁸ DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006).
- ⁹ House of Commons Communities and Local Government Committee, *Litter and fly-tipping in England and Wales (Seventh Report of Session 2014-15)* (London: TSO, 2015) p.4.
- ¹⁰ See, for example, Littering from Vehicles Bill [HL] Second reading, 19 July 2013, column 993. Litter was described in the following terms: 'It was the canary in the cage singing its song and warning anyone who had ears of much bigger social issues'.
- ¹¹ House of Commons Communities and Local Government Committee, *Litter and fly-tipping in England and Wales (Seventh Report of Session 2014-15)* (London: TSO, 2015) p.11.
- ¹² Philip Circus, 'Litter capital of Europe?' [1991] 141 *NLJ* 23.
- ¹³ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018).
- ¹⁴ HM Government, *A Litter Strategy for England* (London: DEFRA, 2017).
- ¹⁵ [1995] *The Times*, 31 July 1995.
- ¹⁶ *Westminster City Council v. Riding* [1995] *The Times*, 31 July 1995. This was in contrast to the Magistrates Court, in which this decision was originally heard, where it was held that 'litter' did not include 'commercial waste'. For further discussion of this case, see: 'Case Comment, Commercial waste' [1996] *Journal of Planning and Environment Law* 666.
- ¹⁷ Department for Environment, Food and Rural Affairs, *Getting to grips with the Clean Neighbourhoods and Environment Act 2005 – a parish council guide to environmental enforcement* (London: 2006) pp.59-60.
- ¹⁸ [1995] *The Times*, 31 July 1995.
- ¹⁹ DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006) Section 5.2. The Code is specifically admissible in proceedings where a dereliction of duty under s.89 has been alleged, for example where land has been defaced by litter and refuse.
- ²⁰ Detritus is not defined in legislation; this definition is provided by DEFRA, see: DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006) Section 5.5. Under the EPA 1990, Section 89(2) there is no mention of a duty to remove 'detritus', only that the local authorities have a duty to 'ensure that the highway or road is, so far as practicable, kept clean of 'litter and refuse'. According to DEFRA's guidance notes, under the EPA 1990, Section 89 it is also a requirement that detritus on metalled highways must be removed under the duty to keep highways clean. Thus, detritus must be removed from the highway but not from other hard surfaces such as pavements. The DEFRA Code, therefore, recommends that detritus should also be removed alongside litter and refuse (Section 5.6 of the Code) as part of the Section 89(2) duty. See also the following guidance from Scotland which

suggests that detritus ought not to be regarded as litter: Scottish Government, *Code of Practice on Litter and Refuse (Scotland) 2018: Statutory guidance on keeping land free of litter and refuse, and roads clean*, (Edinburgh: Scottish Government, 2006) p.4.

²¹ Dog faeces are to be treated as if they were refuse (for the purposes of removal by the local authority) when on certain descriptions of public land (Dog fouling is a separate offence from littering). See DEFRA Code of Practice on Litter and Refuse (London: April 2006) Section 5.4. See also Scottish Executive Environment Group, Code of Practice on Litter and Refuse issued under Section 89 of the Environmental Protection Act 1990 (Natural Scotland: Scottish Executive, 2006), p.2. However, see the discussion in the Environmental Protection Bill HC Deb 15 Jan 1990 1990 vol 165, cc28-119 where it is observed that ‘until... the Secretary of State says that dog mess will be included in the definition of “refuse” in the Bill, dog mess will not be counted as refuse. That could mean that, when the street cleaner comes along and sees the dog mess, he will say that... dog mess is not refuse, so he will carefully sweep around it. If he is at all legally minded and looks at his copy of the Environmental Protection Act, that is what he will see’. The 2014 Anti-social Behaviour, Crime and Policing Act includes transitional provision for Dog Control Orders to evolve into public spaces protection orders in October 2017, see Section 75.

²² ‘Refuse should be regarded as having its ordinary meaning of waste or rubbish, including household and commercial waste, and can include fly-tipped waste’. See The DEFRA Code of Practice on Litter and Refuse (London: April 2006) Section 5.4.

²² DEFRA Code of Practice on Litter and Refuse (London: April 2006) Section 5.4.

²³ There is no specific definition of fly-tipping in legislation other than reference to the offence under the EPA 1990, Section 33 which prohibits the unauthorised or harmful deposit, treatment or disposal etc. of waste states that ‘a person shall not... deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence’. See DEFRA Code of Practice on Litter and Refuse (London: April 2006) Section 5.7. Fly-tipping is regarded to be a form of refuse (Section 5.4 of the DEFRA Code of Practice on Litter and Refuse (London: April 2006)) and it has been suggested that ‘Nor does litter include flytipped material which comprises inappropriately disposed or dumped household, commercial or industrial waste’. See Scottish Executive Environment Group, Code of Practice on Litter and Refuse issued under section 89 of the Environmental Protection Act 1990 (Natural Scotland: Scottish Executive, 2006), p.2.

²⁴ See ‘Hazardous waste’ <http://www.Gov.uk/dispose-hazardous-waste>

²⁵ Under the Refuse Disposal (Amenity) Act 1978 Section 2(1) a person will be guilty of an offence and liable on a summary conviction for a fine of up to £2,500 or imprisonment for a term not exceeding three months or both, if a person under s.(2)(1)(a) ‘abandons on any land in the open air, or on any other land forming part of a highway, a motor vehicle or anything which formed part of a motor vehicle and was removed from it in the course of dismantling the vehicle on the land’. In the alternative, under Section 2A (inserted by the 2005 Clean Neighbourhoods and Environment Act) the local authority can issue a Fixed Penalty Notice instead, which currently stands at £200. Under Section 2(2) it states that, ‘For the purposes of subsection (1) above, a person who leaves any thing on any land in such circumstances or for such a period that he may reasonably be assumed to have abandoned it or to have brought it to the land for the purpose of abandoning it there shall be deemed to have abandoned it there or, as the case may be. To have brought it to the land for that purpose unless the contrary is shown’. See *Vaughan v. Biggs* [1960] 2 All ER 473, which was based on the offence previously covered by the Litter Act 1958 Section 1(1).

²⁶ The EPA 1990, Section 99 provides local authorities with powers to seize abandoned shopping and luggage trolleys, and remove them (see further Schedule 4, Section 2(1)). Further detail is included in Schedule 4 of the



Act, which applies where ‘any shopping or luggage trolley is found by an authorised officer of the local authority on any land in the open air and appears to him to be abandoned’ (EPA 1990, Sch. 4, Section 1(1)). Definitions of each term are contained in Sch. 4, Section 5.

²⁷ DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006) Section 14.2.D.

²⁸ *Ibid.*, Section 5.3.

²⁹ For further detail on different types of litter see The Industry Council for Research on Packaging & the Environment, *Litter Composition Survey of England* (London: Keep Britain Tidy, 2013) pp.6-14 and pp.16-17.

³⁰ For Scotland, the criminal offence reads, ‘if any person throws down, drops or otherwise deposits in, into or from any place to which this section applies, and leaves, any thing whatsoever in such circumstances as to cause, or 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’.

³¹ Note that ‘land below the place to which the tide flows at mean high water springs is not to be treated as relevant land of Principal litter authorities’. See DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006) Section 11.9.4.

³² In *Felix v. DPP* [1998] Crim LR 657 – a telephone box was not regarded as a ‘public open space’ on the basis that it was not ‘open to the air on one side’.

³³ DEFRA, *Litter and Refuse: Guidance on Part 4 of the Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act* (London: 2006) para.2.4
<http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/environment/quality/local/legislation/cnea/documents/litter-refuse.pdf>

³⁴ DEFRA, *Getting to grips with the Clean Neighbourhoods and Environment Act 2005 – a parish council guide to environmental enforcement* (London: 2006) p.61. This Guidance has now been withdrawn but there is no reason to believe that DEFRA’s approach has changed.

³⁵ Environmental Protection Bill, HL Deb 15 October 1990, vol 522 cc584-649 per Lord Meston.

³⁶ [1998] *The Times* 5 May 1998.

³⁷ *Vaughan v. Biggs* [1960] 2 All ER 473.

³⁸ Section 127 of the 1980 Magistrates’ Court Act, and *Westminster City Council v. Riding* [1995] *Times*, 31 July 1995.

³⁹ *Witney v. Cattnach* [1979] Crim LR 461. This case was referred to in the case of *Westminster City Council v Riding* [1995] *Times*, 31 July 1995.

⁴⁰ Litter Bill, HC Deb 02 May 1958, vol 587 cc793-809 per Ronald Bell.

⁴¹ DEFRA, *Local environmental enforcement – Guidance on the use of fixed penalty notices* (London: DEFRA, 2007) p.46. This Guidance has now been updated.

⁴² *Ibid.*

⁴³ Guidance: Enforcement officers: issuing fixed penalty notices, 23 March 2015
<https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices>

⁴⁴ House of Commons Library, *Commons Library Analysis of the Environment Bill 2019-20 CBP-8712* (London: House of Commons, 2019) pp. 106-107.

⁴⁵ DEFRA, *Local environmental enforcement – Guidance on the use of fixed penalty notices* (London: DEFRA, 2007) p. 46. Note that this guidance has officially been withdrawn but the same approach to FPN issuance has been taken in the latest 2015 DEFRA guidance.

⁴⁶ See also DEFRA, Part 1A – *Effective enforcement: Code of practice for litter and refuse* (London: DEFRA, 2019) para.11K.3.

⁴⁷ Regulation 12, The Environmental Offences (Fixed Penalties) (England) Regulations 2017.

⁴⁸ DEFRA, Part 1A – *Effective enforcement: Code of practice for litter and refuse* (London: DEFRA, 2019) para.11E.4.

⁴⁹ *Ibid.*, para.11N.11.

⁵⁰ S.21, 2006 Legislative and Regulatory Reform Act.

⁵¹ DEFRA, Part 1A – *Effective enforcement: Code of practice for litter and refuse* (London: DEFRA, 2019) para.11B.2.

⁵² *Ibid.*, para.11D.1.

⁵³ Hansard, Clean Neighbourhoods and Environment (Amendment) Bill [HL] (second reading) 19 July 2013, column 1027. Also, see Littering from Vehicles Bill [HL] Second Reading, 19 July 2013, column 983, where a preference is expressed towards civil over criminal penalties, since both have an effect on behaviour modification.

⁵⁴ Press Release, New Steps to Tackle Litter Announced, <https://www.gov.uk/government/news/new-steps-to-tackle-littering-announced>

⁵⁵ *Ibid.*

⁵⁶ Home Office, *Information note: litter and rubbish*, p.1.

⁵⁷ Victoria Ward, 'Council loses nine-month legal battle with man who accidentally dropped a piece of orange peel' (*The Telegraph*, 6 July 2015).

⁵⁸ Hansard, Clean Neighbourhoods and Environment (Amendment) Bill [HL] (second reading) 19 July 2013, column 1027.

⁵⁹ DEFRA, Part 1A – *Effective enforcement: Code of practice for litter and refuse* (London: DEFRA, 2019) para.11G.6.

⁶⁰ *Ibid.*, paras.11N22-38.

⁶¹ *Ibid.*, para.11.A.6.

⁶² See definition of statutory undertakers under the Highways Act 1980, Section 329 which states that statutory undertakers 'means persons authorised by any enactment to carry on any of the following undertakings: (a) a railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking'.

⁶³ This duty was extended to include parish councils by the 2007 Local Government and Public Involvement Health Act. For further detail, see Communities and Local Government, *Power to promote well-being of the area: Statutory guidance for local councils* (London: Department for Communities and Local Government, 2009).

⁶⁴ DEFRA, *Tackling drug related litter: Guidance and good practice* (London: DEFRA, 2005) p.15.

⁶⁵ DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006) pp.16-17.

⁶⁶ *Ibid.*, p.18.

⁶⁷ *Ibid.*, pp.18-21.

⁶⁸ A definition of 'reasonably practicable' can be found in *Edwards v. National Coal Board* [1949] 1 All ER 743 where the Court of Appeal stated that "'Reasonably practicable" is a narrower term than "physically possible" ... a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them.'

⁶⁹ 2015 Infrastructure Act, Sections 1-2. Such a company must be (a) limited by shares and (b) wholly owned by the Secretary of State. For an overview of this statute see Alec Samuels, 'Infrastructure Act 2015' [2015] 6 *Journal of Planning and Environmental Law* 646.

⁷⁰ Section 5(2)(a), 2015 Infrastructure Act.

⁷¹ Known as a Design Build Finance and Operate (DBFO) contract.

⁷² See the list,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/532214/S160106_Litter_Strategy.pdf

⁷³ Roads Liaison Group, *Well-maintained Highways Code of Practice for Highway Maintenance Management* (Norwich: TSO, 2005) p.31.

⁷⁴ House of Commons Communities and Local Government Select Committee Report, *Litter and Fly-Tipping in England and Wales* (Seventh Report of Session 2014-15) (London: TSO, 2015) pp.21-22.

⁷⁵ *Ibid.*, p.5 and p.21 respectively.

⁷⁶ Department for Transport, *Guidance on Road Classification and the Primary Route Network* (Department for Transport: 2012) p.22.

⁷⁷ Louise Butcher, *Roads: unadopted* (House of Commons Library: Business and Transport, 18 October 2010) p.1.

⁷⁸ See pages 25 and 34 of the DEFRA, *Code of Practice on Litter and Refuse* (London: DEFRA, 2006); DEFRA, *Litter and Refuse: Council Responsibilities to keep land clear* (London: DEFRA, 2005).

⁷⁹ Surfers Against Sewage, *Marine Litter Report 2014-2020 Vision* (Cornwall: Surfers Against Sewage, 2014).

⁸⁰ See for example Tendring's 'Street Sweeping Schedule' <http://www.tendringdc.gov.uk/rubbish-and-recycling/street-sweeping>

⁸¹ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018) p.93.

⁸² Under the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998, ships must display placards informing crew and passengers about disposal requirements for garbage, every ship of 400 gross tonnes or certified for 15 or more passengers must have a garbage management plan and maintain a garbage record book.

⁸³ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018) p.88.

⁸⁴ Section 113, 1991 Water Resources Act.

⁸⁵ Inland waterways consist of narrow rivers and canals (depth of less than 1.5m), wider rivers and canals (significant wave heights of less than 0.6 m), tidal rivers and estuaries and large lakes (with significant wave heights of less than 1.2 m), tidal rivers and estuaries (with significant wave heights of less than 2m). See also the *Environmental Management Guidance: River maintenance and Drainage Charges: Farmers and Landowners* <https://www.gov.uk/guidance/river-maintenance-and-drainage-charges-farmers-and-landowners>

⁸⁶ Hansard Debates, Winter Floods 2013-14, 8 January 2015 vol. 590.

⁸⁷ Under the Land Drainage Act 1991 and Water Resources Act 1991.

⁸⁸ The Transport Act 1968 s105(1) states that the Waterways Board (i.e. the Canal and Rivers Trust) has a duty: '(a) to maintain the commercial waterways in a suitable condition for use by commercial freight-carrying vessels; and (b) to maintain the cruising waterways in a suitable condition for use by cruising craft...'

⁸⁹ See also Environment Agency, *Living on the edge: A guide to your rights and responsibilities of riverside ownership* (Bristol: Environment Agency, 2014).

⁹⁰ The Flood and Water Management Act 2010, s1(1) states that a flood: 'includes any case where land not normally covered by water becomes covered by water'. Under s3 of the Act, relevant bodies (such as the



Environment Agency) have powers under s3 to engage in flood risk management. Under s3(d), for example, they may have to undertake works on a river or other watercourse which can include ‘taking things out of it’. This could be interpreted, for example, to include the removal of litter.

⁹¹ Note also that under the Highways Act 1980, s41 highways agencies have a duty to maintain the highway. This is not absolute. Bodies must take such care as reasonably required to ensure highways are not dangerous. What is reasonable is defined under s58 of the Act. Furthermore, under s130 there is a general duty to protect the rights of the public to use and enjoy the highway which includes the removal of obstructions (flooding, for example, is classed as an obstruction).

⁹² ‘Flooding – who’s responsible?’ <https://www.southernwater.co.uk/flooding-whos-responsible>

⁹³ Land Drainage Responsibilities, Powers, Rights and Roles

<https://www.southsomerset.gov.uk/media/8589/9a.%20land%20drainage%20responsibilities.pdf>

⁹⁴ Land Drainage Act 1991.

⁹⁵ Ibid.

⁹⁶ Ibid., s25. Also, see: <http://www.wakefield.gov.uk/Documents/roads-parking/land-drainage-flooding/riparian-information.pdf>

⁹⁷ Fly-tipping hot spot gets spring clean, <https://www.gov.uk/government/news/fly-tipping-hot-spot-gets-spring-clean--2>

⁹⁸ Climate Vision, *Leaf Litter Project Toolkit* (Climate Vision, 2015) p.4. See:

https://nationalfloodforum.org.uk/wp-content/uploads/2017/04/Leaf-Litter-Toolkit-2015_Cornwall.pdf

⁹⁹ Ibid. See: https://nationalfloodforum.org.uk/wp-content/uploads/2017/04/Leaf-Litter-Toolkit-2015_Cornwall.pdf

¹⁰⁰ Rail Passengers Council, *Good Riddance to Bad Rubbish: An Action Guide for Passengers and Others* (Rail Passengers Council: 2002) pp.4-8.

¹⁰¹ See Network Rail, *Litter and Fly-Tipping on the Railway: How we’re working to keep the railway tidy*

<http://www.networkrail.co.uk/asp/1026.aspx> The rail stations are: Birmingham New Street, Bristol Temple Meads, Cannon Street, Charing Cross, Edinburgh Waverley, Euston, Glasgow Central, King’s Cross, Leeds, Liverpool Lime Street, Liverpool Street, London Bridge, Manchester Piccadilly, Paddington, Reading, St. Pancras International, Victoria, Waterloo.

¹⁰² A similar provision exists in respect of Scotland in the Litter Act 1983, Section 7. However, note that under the 1983 Litter Act, Section 5 the litter authority does not have the power to place a litter bin or noticeboard (a) ‘on land forming part of an open space as defined in the Open Spaces Act 1906 which is provided by or under the management and control of some other litter authority or a parish meeting, without the consent of that authority or meeting or (b) on any other land not forming part of a street, without the consent of the owner and of the occupier of that land’.

¹⁰³ *James v. Birmingham City Council* [2010] EWHC 282 (Admin). See also Alec Samuels, ‘Anti-Social Behaviour Orders: Their Legal and Jurisprudential Significance’ [2005] 69 *Journal of Criminal Law* 223, at 224-225.

¹⁰⁴ *Swindon Borough Council v. Redpath* [2009] EWCA Civ 943.

¹⁰⁵ HM Government, *A Litter Strategy for England* (London: DEFRA, 2017) p.47.

¹⁰⁶ Issuing Fixed Penalty Notices (FPNs) <http://network.keepbritaintidy.org/issuingfixedpenaltynotices/1537>

¹⁰⁷ DEFRA, *Review of Fixed Penalties for Environmental Offences and Introduction of Civil Penalties for Littering from Vehicles Outside London* (London: DEFRA, 2017) p24.

¹⁰⁸ Regulation 12, The Environmental Offences (Fixed Penalties) (England) Regulations 2017.



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- ¹⁰⁹ The government Website directs the user to the nearest district/borough council to report a litter problem: <https://www.gov.uk/report-litter>
- ¹¹⁰ Local Government Ombudsman in England <http://www.lgo.org.uk/>
- ¹¹¹ Public Service Ombudsman in Wales <http://www.ombudsman-wales.org.uk/>
- ¹¹² Housing Ombudsman <http://www.housing-ombudsman.org.uk/>
- ¹¹³ Public Service Ombudsman in Wales <http://www.ombudsman-wales.org.uk/>
- ¹¹⁴ Noisedirect <http://www.noisedirect.co.uk/>
- ¹¹⁵ *Birmingham CC v. (1) VB (2) HC (3) F* [2008] EWHC 1224 (QB).
- ¹¹⁶ *Birmingham CC v. (1) Marnie Shafi (2) Tyronne Ellis* [2008] EWCA Civ 1186 (CA).
- ¹¹⁷ *Birmingham CC v. Shafi and Ellis* [2008] EWCA Civ 1186 (CA).
- ¹¹⁸ In *Brumby v. Octavia Hill Housing Trust* [2010] EWHC 1793 (QB) the claimant was a tenant who succeeded in a private nuisance case against landlord, after suffering four years of anti-social behaviour (including littering).
- ¹¹⁹ [1940] AC 880.
- ¹²⁰ See the 1998 The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the Aarhus Convention).
- ¹²¹ Civil Procedure Rules, Rule 45.41, and Practice Direction 45, 5.1.
- ¹²² *R (on the application of ClientEarth) v. Secretary of State for the Environment, Food and Rural Affairs* [2015] UKSC 28. See also the case won by Client Earth based on the inadequacy of the government's follow-up plans to reduce air pollution *ClientEarth (No.2) v. Secretary of State for the Environment, Food and Rural Affairs* [2016] EWHA 2740.
- ¹²³ Michael Watson, 'Environmental Offences: The Reality of Environmental Crime' [2005] 7 *Env'tl L Rev* 190 at 190.
- ¹²⁴ For further information about the portable ashtrays supplied by Braintree District Council, see http://www.braintree.gov.uk/info/200344/green_heart_of_essex/304/order_more/2
- ¹²⁵ House of Commons Communities and Local Government Select Committee Report, *Litter and Fly-Tipping in England and Wales* (Seventh Report of Session 2014-15) (London: TSO, 2015) para.32.
- ¹²⁶ HM Government, *A Litter Strategy for England* (London: DEFRA, 2017) p.62.
- ¹²⁷ The Beverage Container Act 1971. This legislation was amended in 2007 (the Oregon Bottle Bill).
- ¹²⁸ Littering from Vehicles Bill [HL] Second reading, 19 July 2013, column 1003.
- ¹²⁹ <http://www.thinkcans.net/>
- ¹³⁰ <https://www.gov.uk/government/news/views-sought-on-reward-and-return-schemes-for-drinks-containers>
- ¹³¹ Environment Bill summer policy statement, 23 July 2019.
- ¹³² Nell Parpworth, Katharine Thompson and Brian Jones, 'Environmental offences: utilising civil penalties' [2005] *Journal of Planning and Environment Law* 560.
- ¹³³ Press Release, New Steps to Tackle Litter Announced, <https://www.gov.uk/government/news/new-steps-to-tackle-littering-announced>
- ¹³⁴ Keep Britain Tidy, Litter in England: The Local Environmental Quality Survey of England 2017/18, https://www.keepbritaintidy.org/sites/default/files/resource/National%20Litter%20Survey%20201718_0.pdf
- ¹³⁵ DEFRA, *Reducing litter caused by 'food on the go – A Voluntary Code of Practice for local partnerships* (London: DEFRA, 2004) p.5.

¹³⁶ London Local Authorities Bill, HL Deb, 25 January 2012 at column 336.

¹³⁷ House of Commons Communities and Local Government Select Committee Report, *Litter and Fly-Tipping in England and Wales* (Seventh Report of Session 2014-15) (London: TSO, 2015) para.20.

¹³⁸ Ibid.

¹³⁹ Littering from Vehicles Bill [HL] Second reading, 19 July 2013, column 1002.

¹⁴⁰ European Commission, *Environment 2010: Our Future, Our Choice' 6th EU Environment Action Programme 2001-2010* (Luxembourg: Office for Official Publications of the European Communities, 2001).

¹⁴¹ Ibid., p.8.

¹⁴² HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018) p.87.

¹⁴³ Environment Bill summer policy statement, 23 July 2019.

¹⁴⁴ 'Waitrose Trials "Bring your own" Container Scheme to Reduce Plastic Waste'

<https://www.independent.co.uk/life-style/food-and-drink/waitrose-plastic-container-bring-your-own-trial-a8942876.html> 4 June 2019.

¹⁴⁵ DEFRA, *Reducing litter caused by 'food on the go – A Voluntary Code of Practice for local partnerships* (London: DEFRA, 2004).

¹⁴⁶ Ibid., p.59.

¹⁴⁷ House of Commons Communities and Local Government Select Committee Report, *Litter and Fly-Tipping in England and Wales* (Seventh Report of Session 2014-15) (London: TSO, 2015) p.17.

¹⁴⁸ DEFRA, *Reducing litter caused by 'food on the go – A Voluntary Code of Practice for local partnerships* (London: DEFRA, 2004) p.66.

¹⁴⁹ House of Commons Communities and Local Government Select Committee Report, *Litter and Fly-Tipping in England and Wales* (Seventh Report of Session 2014-15) (London: TSO, 2015) p.27.

¹⁵⁰ 'Green Heart of Essex'

https://www.braintree.gov.uk/info/200344/green_heart_of_essex/305/green_heart_of_essex/3

¹⁵¹ HM Government, *A Litter Strategy for England*, (London: DEFRA, 2017) p.25.

¹⁵² Ibid., p.26.

¹⁵³ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018) p.91.

¹⁵⁴ Ibid.

¹⁵⁵ 'Home Secretary outlines Review of Regulation of Investigatory Powers Act',

<http://www.cjp.org.uk/news/archive/home-secretary-outlines-review-of-regulation-of-investigatory-powers-act-17-04-2009/> Following complaints of dog fouling, a local authority installed a hidden video camera for a period of 28 days so as to identify the offender. No authorisation was sought under the 2000 Regulation of Investigatory Powers Act. The offender was not identified. The complainant alleged that the camera pointed to his doorway in violation of Article 8 of the European Convention on Human Rights. The local authority argued that the surveillance was bona fide activity in the light of the surveillance under RIPA. However, as no authorisation had been in place, the Tribunal upheld the complaint and ordered that recordings should be destroyed within 28 days. However, the case did not set a precedent that directed surveillance against dog fouling is never proportionate, just that appropriate authorisation for direct surveillance is needed. See also Ibrahim Hassan, 'In Practice: Legal Update: Freedom of Information' [2011] 10 *LS Gaz* 20, Nicholas Dobson, 'Grim RIPA' [2009] 23 *LS Gaz* 16.

¹⁵⁶ Nigel South and Avi Brisman, *Routledge International Handbook of Green Criminology* (Oxon: Routledge, 2013) pp. 404-405. Surveillance cameras are being used to combat littering and fly-tipping in the USA and in Ireland. See Gerry Forbes, *Reducing Litter on Roadsides* (Transportation Research Board: Washington D.C, 2009) pp.6-7.

¹⁵⁷ Vibeka Venema, 'The Dutch boy mopping up a sea of plastic', *BBC News*, 17 October 2014.

¹⁵⁸ <http://map.whoownsengland.org> useful tool in determining who owns land and thus who may be responsible for clearing litter. Main landowners are: (uses public data and FOI requests to determine this). Top ten corporate bodies, according to the website are: the Church Commissioners for England, Transport for London, the Canal and River Trust, the Environment Agency, trustees for Methodist Church purposes, the Secretary of State for Defence, the Secretary of State for Transport, the Queen's Most Excellent Majesty in Right of Her Crown, the Homes and Communities Agency and the Queen's Most Excellent Majesty in Right of her Duchy of Lancaster.

¹⁵⁹ *Report on policies and proposals relating to plastic pollution and packaging waste* (Cardiff: National Assembly for Wales, 2019).

¹⁶⁰ Article 40 of the Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014.

¹⁶¹ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008.

¹⁶² Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', para.19.

¹⁶³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, A European Strategy for Plastics in a Circular Economy, COM/2018/028 final.

¹⁶⁴ Regulation (EU) No 1255/2011 of the European Parliament and of the Council of 30 November 2011.

¹⁶⁵ Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC.

¹⁶⁶ Beach Litter - Abundance, Composition and Trends, D.10 Marine Litter, OSPAR, <https://oap.ospar.org/en/ospar-assessments/intermediate-assessment-2017/pressures-human-activities/marine-litter/beach-litter/>

¹⁶⁷ See the OSPAR website <http://www.ospar.org/work-areas/eiha/marine-litter>

¹⁶⁸ UNEP Regional Seas Programme, *Marine Litter – An analytical overview* (UNEP, 2005).

¹⁶⁹ United Nations Environment Programme, 2017.

¹⁷⁰ Paragraph 4(h), Draft resolution on marine litter and microplastics, UNEP/EA.3/L.20, 5 December 2017.

¹⁷¹ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (London: DEFRA, 2018), p.93.

¹⁷² (Application no. 36022/97) 8 July 2003.

¹⁷³ *Hatton and Others v. UK* (Application no. 36022/97) 8 July 2003 at para 96.

¹⁷⁴ *Ibid.*

¹⁷⁵ (Application no. 30765/08) 10 January 2012.

¹⁷⁶ *Ibid.*, at para 110.

¹⁷⁷ *Di Sarno and Others v. Italy* (Application no. 30765/08) 10 January 2012 at para 108.

¹⁷⁸ (Application no. 4143/02) 16 November 2004.

¹⁷⁹ See, for example: *Surugiu v. Romania* (Application no. 48995/99) 20 April 2004. This case concerned acts of harassment by third parties who entered the applicant's home and dumped several cartloads of manure onto the applicant's property. The Court held that this repeated interference by third parties amounted to an interference with the applicant's right to respect for his home and that Article 8 applied.

¹⁸⁰ *Moreno Gomez v. Spain* (Application no. 4143/02) 16 November 2004 at para 55. Also, see *Kolyadenko and Others v. Russia* (Application no. 17423/05) 28 February 2012.

¹⁸¹ (Application no. 41666/98) 22 May 2003.



¹⁸² *Kyratatos v. Greece* (Application no. 41666/98) 22 May 2003 at para 52.

¹⁸³ '£6 million cost to collect litter on motorways – Bag and Bin it, Highways Agency asks road users'
<https://www.gov.uk/government/news/6-million-cost-to-collect-litter-on-motorways-bag-and-bin-it-highways-agency-asks-road-users>

¹⁸⁴ DEFRA, *Review of Fixed Penalty Notices for Environmental Offences and Introduction of Civil Penalties for Littering from vehicles outside London* (London: DEFRA, 2017) p.10.

¹⁸⁵ *Ibid.*, see also DEFRA, *Part 1A – Effective enforcement Code of practice for litter and refuse* (London: DEFRA, 2019) p.7.

¹⁸⁶ DEFRA, *Review of Fixed Penalty Notices for Environmental Offences and Introduction of Civil Penalties for Littering from vehicles outside London* (London: DEFRA, 2017) p.19.

¹⁸⁷ *Ibid.*

¹⁸⁸ DEFRA, *Part 1A – Effective enforcement: Code of practice for litter and refuse* (London: DEFRA, 2019) para.11C.1.

¹⁸⁹ *Ibid.*