

## Code of practice on litter and refuse

# Modification to the Code of Practice on Litter and Refuse 2006 – Effective enforcement

1. This modification of the Code of Practice on Litter and Refuse published in 2006 is made under section 89(9) of the Environmental Protection Act 1990 ('EPA 1990') and is issued by the Secretary of State for Environment, Food and Rural affairs. The Code of Practice on Litter and Refuse provides practical guidance on how to discharge the duties imposed on duty bodies to keep relevant land clear of litter and refuse, and on local authorities and the Secretary of State to keep clean those public highways for which they are responsible, as set out in section 89(1) and (2) EPA 1990.
2. Many duty bodies (referred to in this part of the Code of Practice as "enforcing authorities") also therefore have complementary enforcement powers to help deter and sanction the behaviours that lead to the defacement of land by litter. Appropriate, effective and proportionate use of enforcement powers will help all duty bodies to comply with their duties to keep relevant land clear of litter and refuse, and to keep relevant highways clean. A balanced approach to enforcement should strike the balance between national consistency, local circumstances, fairness and effectiveness.
3. This modification to the Code:
  - (a) updates the Code in respect of the changes to fixed penalty levels, and the new civil penalties for littering from vehicles, that resulted from the introduction of the Environmental Offences Regulations (Fixed Penalties) (England) Regulations 2017 and the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018;
  - (b) relates particularly to the use of fixed penalty notices in lieu of prosecution for the offences of littering (s87 EPA 1990), and the unauthorised distribution of free literature (paragraph 9 Schedule 3A EPA 1990), and the use of civil penalties to penalise the keeper of a vehicle from which litter is thrown (s88A EPA 1990);
  - (c) advises the relevant authorities of the procedures that they must follow, the procedures to which they must have regard, and the procedures that the government recommends they follow when enforcing against littering and related offences;
  - (d) sets out the policy framework within which the government believes that litter authorities should be exercising their environmental enforcement powers, including how to approach, carry out and review enforcement activity;
  - (e) contains information for members of the public, as well as local authorities, about environmental offences and their enforcement.
4. Since dog faeces are also classed as "refuse" for the purposes of Part 4 of the Environmental Protection Act 1990,<sup>1</sup> this modification to the Code also applies to the

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<sup>1</sup> Litter (Animal Droppings) Order 1991

use of enforcement action in respect of dog fouling offences contrary to Public Space Protection Orders (PSPOs) issued under the Anti-social Behaviour, Crime and Policing Act 2014. It should be read in conjunction with wider guidance on powers to control dogs.<sup>2</sup>

5. As set out in Part 2 of the Code of Practice (Advisory standards for graffiti and fly-posting), duty bodies are also encouraged to manage the problems of graffiti and fly-posting as part of compliance with their section 89 duties. This guidance will therefore also be relevant to enforcement against these offences.<sup>3</sup>
6. This part of the Code of Practice is good practice guidance. Where it says that something must be done, this means that it is a requirement in either primary or secondary legislation. Where a statute imposes a duty on a body or organisation, a failure to comply will constitute a breach of statutory duty. If there appear to be differences between primary or secondary legislation and this Code, the legislation always takes precedence.
7. Section 89(10) EPA 1990 stipulates that local authorities must have regard to the information contained in the Code of Practice on Litter and Refuse, of which this modification forms part. It should be read alongside any other relevant guidance and any further modifications to the [Code of Practice on Litter and Refuse](#) subsequently issued by the government (available on the GOV.UK website).<sup>4</sup>
8. The Code of Practice on Litter and Refuse is modified as follows:
  - (a) On page 3 (“Contents”), before Part 2 insert:  
“Part 1A – Effective enforcement”
  - (b) On page 5, following section 1.5, section 1.5A has been inserted with the following wording:  
“Part 1A (as inserted by modification in 2019) contains guidance on the proportionate and effective use of enforcement action against littering and related offences. Appropriate, effective and proportionate use of enforcement powers will help all duty bodies to comply with their duties to keep relevant land clear of litter and refuse, and to keep relevant highways clean. A balanced approach to enforcement should strike the balance between national consistency, local circumstances, and fairness and effectiveness.”
  - (c) After Part 1, the new Part 1A set out in the Annex is inserted.

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<sup>2</sup> <https://www.gov.uk/guidance/control-dogs>

<sup>3</sup> Section 43 of the Anti-social Behaviour Act 2003 enables “authorised officers” of local authorities to issue fixed penalty notices for graffiti or fly-posting offences EXCEPT in circumstances where (i) the commission of a graffiti offence under s 1(1) of the Criminal Damage Act 1971 also involves the offence of racially or religiously aggravated criminal damage under section 30 of the Crime and Disorder Act 1998, or (ii) any other graffiti or fly-posting offence is motivated (wholly or in part) by hostility towards one or more members of a racial or religious group based on their membership of that group.

<sup>4</sup> <https://www.gov.uk/government/publications/code-of-practice-on-litter-and-refuse>