



# Fulfilling Duty 1: Keeping land clear of litter and refuse

**Supporting advice for the Code of Practice on  
Litter and Refuse (Scotland) 2018**

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**Note: This information is for advice only and does not constitute legal guidance.**

## 1 Keeping land clear of litter and refuse

The Environmental Protection Act 1990 section 89 (1) places a duty on relevant duty holders to **keep their land clear of litter and refuse**.

CoPLAR supports this by providing practical advice which helps the body to achieve and maintain the standard, which reflects duty fulfilment. This document builds on CoPLAR and provides additional information to help duty holders fulfil their duty.

## 2 Responsible authorities and relevant land

Several factors determine if land is classed as relevant land: generally, it is publicly accessible land that is open to the air on at least one side and is under the control of a duty holder. It also extends to land which is open to the air but is not publicly accessible, for certain railway tracks and educational land.

The table below is intended to promote consideration of different land types, but it does not provide a definitive list, instead, it provides potential land types that could be classed as relevant land of duty holders. Organisations will wish to consider these land types and the factors determining relevant land when deciding whether their land falls within scope of the duties.

It is a **duty holder's responsibility** to identify and zone their own relevant land and seek legal advice where necessary.

Duty Holder	Relevant Land	Possible land to be considered
<b>Principal Litter Authorities:</b> <ul style="list-style-type: none"><li>• Local Authorities</li><li>• Joint Boards</li></ul>	land is 'relevant land' of a principal litter authority if: <ul style="list-style-type: none"><li>• it is open to the air on at least one side</li><li>• under the direct control of such an authority</li><li>• the public are entitled or permitted to have access with or without payment.</li></ul>	A, B and C class roads*, unclassified and local roads Streets, pavements and pedestrian areas Housing land Parks, open spaces, public amenity land Woodland Beaches, ponds, lochs, rivers, canals Common good land Public cemeteries and churchyards Leisure Facilities e.g. tennis courts, sports fields Local Authority estates and facilities Other land managed by Local Authorities
<b>Crown Authorities:</b> <ul style="list-style-type: none"><li>• Crown Estate Commissioners (Crown Estate Scotland)</li><li>• Ministers in charge of Government Departments</li><li>• Bodies occupying or managing land on the Crown's behalf</li></ul>	Land is 'relevant Crown land' if: <ul style="list-style-type: none"><li>• it is open to the air on at least one side</li><li>• occupied/managed by a crown authority</li><li>• the public are entitled or permitted to have access with or without payment</li></ul>	Forestry, woodland, parks, open spaces Historic monuments and heritage sites Naval, military, air force or MoD land Health service estate - car parks, grounds and facilities Beaches, ponds, lochs, rivers, canals Roads, carparks, walkways and paths Other relevant crown land occupied or managed by Crown Authorities unless otherwise the responsibility of the Principal Litter Authority

<b>Educational Institutions</b>	<p>Land of educational institutions is relevant land if:</p> <ul style="list-style-type: none"> <li>• it is open to the air on at least one side</li> <li>• under direct control of the educational institution or the education authority responsible for its management</li> </ul>	<p>Land, grounds and facilities of:</p> <p>Nurseries Primary Schools Secondary Schools Colleges Universities Other relevant land of educational institutions unless otherwise the responsibility of the Principal Litter Authority</p>
<b>Railway Operators*</b>		<p>Track land Track side land Access roads Stations and platforms Car parks and walkways Landscaped areas Other relevant land managed by railway operators</p>
<b>Passenger Transport Executive and Light railway/tramway operators*</b>		<p>Tram lines and stops Subway lines and stations Other relevant land managed by Passenger Transport Executive, light railway or tramway operators</p>
<b>Canal Operators*</b>		<p>Canal embankments Certain towpaths Walkways and cycle paths Canal waterways Car parks Other relevant land managed by canal operators</p>
<b>Port and Harbour Operators*</b>		<p>Ports and harbours Car parks and walkways Access roads Landscaped areas Other relevant land managed by port and harbour operators</p>
<b>Airport Operators*</b>		<p>Airport grounds Airport carparks Access roads Landscaped areas Other relevant land managed by airport operators</p>
<b>Road Transport Operators (excl. taxi or hire cars) *</b>		<p>Bus stations (non-Local Authority) Road haulage depots with public access Other relevant land managed by road operators</p>

In addition, with a specific regard to keeping roads clear of litter and refuse:

- **Scottish Ministers** are responsible for motorways and certain “special roads” such as the A720 Edinburgh Bypass.
- **Local Authorities** are responsible for trunk roads (except motorways and special roads) and for A, B and C class roads in addition to other local publicly accessible roads within their boundaries.

- **Road and public roads** in Scotland are defined in the [Roads \(Scotland\) Act 1984 section 151](#).
- The removal of litter and refuse from trunk roads (except motorways and special roads) is a local authority responsibility, the wider maintenance responsibility sits with Transport Scotland and its operating companies.

\*[The Environmental Protection Act 1990, Section 86](#) and [The Litter \(Statutory Undertakers\) \(Designation and Relevant Land\) Order 1991](#) as amended by [Litter \(Statutory Undertakers\) \(Designation and Relevant Land\) \(Amendment\) Order 1992](#) provide more detailed definitions of the organisations who have a responsibility to undertake these duties.

Additionally if land is designated as a [Litter Control Area under Section 90 of the EPA](#), it is also subject to the duty to keep land clear of litter and refuse.

Local authorities and Crown Authorities are not required to consider land that is below the place to which the tide flows at mean high water springs however bodies with coastal and marine boundaries should take a practical approach and, where appropriate, include such land in their prevention and cleansing activities.

The duty is not transferable, if a duty holder contracts a private company or another agency, the duty holder remains responsible for relevant land. It is recommended that information on the requirements is included in contracts and agreements.

### **3 Materials in scope**

**Litter** is considered to be “waste in the wrong place” where individual or a small number of items are thrown down, dropped or deposited in a public place by any person and left there. In addition, other provisions within the Act require appropriate and sufficient waste collection containers to be used to prevent material from escaping from bins and vehicles. Escaped materials should be treated as litter.

Materials that could be considered as litter are wide ranging, including: food packaging, drink containers, smoking related materials including cigarette ends, chewing gum, food items, fruit peelings, paper and plastic bags.

**Refuse** should be regarded as waste material or rubbish, including household and commercial waste, flytipped waste, dog faeces, animal carcasses and car parts. Refuse tends to be larger items than litter.

## 4 Grades

Litter and refuse grades help duty holders prioritise where action is required, help to monitor litter problems and plan prevention activity. Grade A is the standard that should be met to ensure compliance with the duty.

An objective way of measuring litter and refuse levels provides:

- A consistent approach to measuring the grades and achieving the standard
- Collection of accurate information by using item counts to establish the grade
- Useful information on the scale of the problem for planning and evaluating litter prevention activities

### The six grades

These grades can be used for all types of relevant land, from streets and paths to grass, bushes and waterways.

Grade A is the standard, but it is recognised that this may not be possible to be maintained all the time. It is a duty holder's responsibility to restore it to A grade when it falls below standard and the code sets out maximum timescales for doing so.

It's important that litter levels are monitored - to identify times or situations that could lead to an increase in littering or refuse, and to put measures in place to counteract this.

**The numbers provided for each grade category below apply to an area of 100m<sup>2</sup>.**

**Grade A: No litter or refuse is present on any type of land.**



**Grade B: Small amounts of litter and refuse.**

As a guide, fewer than 5 large items or fewer than 30 small items of litter and refuse.



**Grade C: Moderate amounts of litter and refuse, with small accumulations.**

As a guide, 5-15 large items or 30-90 small items of litter and refuse.



**Grade D: Significant amounts of litter and refuse, with consistent distribution and accumulations. As a guide, 16-30 large items or 91-180 small items of litter and refuse.**



**Grade E: Substantial amounts of litter and refuse with significant accumulations. As a guide, more than 30 large items or more than 180 small items of litter and refuse.**



**Grade F: Incidents of flytipping and hazardous/special waste (drug-related waste, broken glass, chemicals, or spillages).**



[See the image gallery for high resolution images.](#)

### Applying grades

Grades A - E apply to the level of litter in an area and grade F is used for areas where hazardous materials and flytipped waste need to be dealt with differently regardless of whether there is one or more items.

#### What is a large item?

Any item larger than a credit card, including:

- Drinks containers
- Food packaging
- Carrier bags
- Newspapers
- Crisp packets
- Large sweet packets
- Cigarette packaging
- Food (banana skin, sandwich etc.)
- Dog faeces

#### What is a small item?

Any item smaller than a credit card, including:

- Cigarette ends
- Receipts
- Tickets
- Individual sweet wrappers
- Small items of food (e.g. a crisp)

#### Combining large and small items

In many areas, you'll find a combination of large and small items. To combine these into one figure, every six small items is the same as one large item.

$$\text{large items} + (\text{small items} / 6) = \text{total (in large items)}$$

**Example grades based on litter count:**

No. large items	No. small items	No. small items / 6	Total number	Grade
0	0	0	0	A
1	7	1.17	2.17	B
8	12	2	10	C
4	120	20	24	D
14	280	46.7	60.7	E

The grade descriptions and the associated item numbers should be used to determine the scale of the problem. If a report of a problem is being made it would be helpful to understand the scale using the metrics provided in the grade descriptions.

### **Grade F**

Grade F is used when flytipped materials or dangerous or special waste is present in an area.

Flytipping is regarded as refuse and is the illegal disposal of waste from a single bag of waste to large piles of domestic, commercial or construction waste. This can include furniture, chemical drums, tyres, mattresses, black bagged waste, rubble, garden waste to name a few.

Dangerous or special waste is any material which may pose a danger to the environment, people, wildlife and pets. This could be drug related materials, chemicals, substantial amounts of broken glass, bodily fluids, and animal carcasses.

Grade F materials should be removed as soon as possible to reduce the potential for harm or to prevent further flytipping from building up and causing obstruction.

See the [practical guide to monitoring](#)

## 5 Response times

Response times reflect the maximum time to clear litter and refuse and restore an area to the grade A, litter and refuse free, standard.

Responding to litter and refuse quickly is important for duty fulfilment and safety. The maximum speed of restoration considers a body's resources and considers:

- How much is invested in preventative measures
- The amount to be cleaned up
- The area's risk of litter (its zone category)
- Health and safety considerations
- Practical considerations

**Band 1: Response times based on 0-10% spend on prevention**

Grade	F	E	D	C	B	A	Special Considerations
Zone							
1	At the earliest practicable opportunity	1 hour	2 hours	3 hours	12 hours	Clear of litter and refuse	14 days
2		2 hours	4 hours	5 hours	24 hours		21 days
3		6 hours	8 hours	9 hours	48 hours		28 days
4		24 hours	36 hours	48 hours	7 days		35 days
5		48 hours	60 hours	3 days	14 days		42 days
6		14 days	21 days	28 days	42 days		No additional time

**Band 2: Response times based on 11-20% spend on prevention**

Grade	F	E	D	C	B	A	Special Considerations
Zone							
1	At the earliest practicable opportunity	2 hours	3 hours	4 hours	24 hours	Clear of litter and refuse	21 days
2		4 hours	6 hours	8 hours	48 hours		28 days
3		8 hours	10 hours	12 hours	3 days		35 days
4		36 hours	48 hours	3 days	10 days		42 days
5		3 days	4 days	5 days	18 days		49 days
6		21 days	28 days	35 days	49 days		No additional time

**Band 3: Response times based on 21-30% spend on prevention**

Grade	F	E	D	C	B	A	Special Considerations
Zone							
1	At the earliest practicable opportunity	4 hours	5 hours	7 hours	36 hours	Clear of litter and refuse	28 days
2		6 hours	8 hours	12 hours	3 days		35 days
3		12 hours	14 hours	18 hours	4 days		42 days
4		3 days	4 days	5 days	13 days		49 days
5		5 days	6 days	8 days	22 days		56 days
6		28 days	35 days	42 days	56 days		No additional time

#### Band 4: Response times based on >30% spend on prevention

Grade	F	E	D	C	B	A	Special Considerations
Zone							
1	At the earliest practicable opportunity	8 hours	10 hours	12 hours	48 hours	Clear of litter and refuse	42 days
2		12 hours	14 hours	18 hours	4 days		49 days
3		24 hours	48 hours	60 hours	5 days		56 days
4		5 days	6 days	7 days	16 days		63 days
5		7 days	9 days	10 days	26 days		70 days
6		35 days	42 days	49 days	70 days		No additional time

#### Focusing on prevention

To encourage a proactive approach to tackling litter, Duty 1 response times are structured as four bands that recognise duty holders' investment in prevention. The more successful the preventative measures the less need there is to restore and therefore the longer the restoration time allowed. Exactly how much extra time depends on the effectiveness of, and how much is spent on, prevention compared to how much is spent on tackling litter and refuse overall. This approach recognises that prevention is more sustainable than clear up and that, when done effectively, it should reduce the need for clear up.

Examples:

- **BODY 1**
  - Spends 5% (Band 1) of its overall spend on preventative measures.
  - A zone 1 area has deteriorated to a grade E.
  - Maximum of 1 hour to restore the land from E to A.
- **BODY 2**
  - Spends 15% (Band 2) of its overall spend on preventative measures.
  - A zone 1 area has deteriorated to a grade E.
  - Maximum of 2 hours to restore the land from E to A.
- **BODY 3**
  - Spends 25% (Band 3) of its overall spend on preventative measures.
  - A zone 1 area has deteriorated to a grade E.
  - Maximum of 4 hours to restore the land from E to A.
- **BODY 4**
  - Spends 35% (Band 4) of its overall spend on preventative measures.
  - A zone 1 area has deteriorated to a grade E.
  - Maximum of 8 hours to restore the land from E to A.

## **Progressing through the bands**

To progress through the response time bands, duty holders should:

- Show how prevention budgets are allocated
- Be able to justify this allocation (if challenged)
- Show that preventative activity is effective
- Maintain the area at the standard for at least six months
- Publish response time bands on their website, or somewhere else the public can easily access them

It is expected that the band of response times being used by duty holders reflects the preventative spend from the previous financial year unless it is able to evidence spend during the current year.

## **Allocating spend**

To evidence investment in preventative actions, duty holders should keep a record of actions taken and their impact, with the spend for each activity. There's an example summary table below. A more detailed log of each project, including evaluation of effectiveness is recommended to help evidence progress. To calculate the percentage, spend on prevention, a record of cleansing/clearance costs, i.e. non-preventative activity, is also required.

All organisational spend should be recorded – capital and revenue costs, including staff time. This may mean that spend comes from different departmental budgets or grant funding/sponsorship. Regardless of which budget it comes from, it can be included in the overall spend.

The removal of detritus and other local environmental quality issues to improve an areas appearance may help to reduce litter by reducing the “broken window” effect, but duty holders must be able to evidence a positive impact to justify this as preventative spend.

*Example spend summary*

Prevention Tactic	Project	Spend (£)
Communications	1. Area wide installation of contextual messaging 2. Social media campaign	20,000
Engagement	1. Provision of litter prevention kits to local volunteer groups 2. School litter prevention drive	10,000
Infrastructure	1. Transformation of litter hotspot area of open space to community garden/allotment	65,000
Enforcement	1. 1 full time enforcement officer 2. Admin costs	35,000
Partnership Working	1. Partnership agreement with local businesses for installation and servicing of recycle on the go bins	5,000
Service Optimisation	1. Development of litter prevention plan/strategy 2. Re-routing and optimising litter bin locations	10,000
Demand Management	1. Events Litter Prevention	5,000
	Total Prevention Spend	150,000
	Total Clearance Spend	850,000
	Total Spend (prevention + Clearance)	1,000,000

To calculate the percentage spend, and work out the restoration band, use this formula:

$$\% \text{ prevention spend} = \frac{\text{total prevention spend}}{\text{total spend}} * 100$$

Using the example table above:

$$\% \text{ prevention spend} = \frac{150000}{1000000} * 100 = 15\%$$

Band 2 restoration times would therefore apply.

## **Monitoring effectiveness**

Before moving up to the next band of restoration times, the effectiveness of the prevention activity should be monitored to make sure land is consistently meeting the Grade A standard. As well as recording spend, a robust monitoring plan should be considered. This should ensure that prevention tactics can be evaluated, to provide proof that they are having a positive impact on litter and refuse levels and on wider environmental quality.

The monitoring method can be used to conduct monitoring of interventions and it is recommended monitoring is done before, during and after the prevention activity to allow its impact to be evaluated effectively. Additional monitoring techniques could be used.

For advice on developing a monitoring strategy email: [flytipping@zerowastescotland.org.uk](mailto:flytipping@zerowastescotland.org.uk)

**Details of preventative activities can be found here.**

## **Special Considerations**

The special considerations response times provide extended response times for areas where it is not practicable to remove litter and refuse within the normal response times for that zone. This could be because of:

- Health and safety requirements
- Restricted access
- The need for specialist removal equipment

Duty holders must be able to evidence why special considerations have been used in a particular situation. Where a permanent special consideration is required for an area then the duty holder needs to record this as part of the zoning process. Where special considerations are applied for temporary reasons this should be noted by the duty holder. Where there are difficult to remove materials special considerations times can only be used for removal of that material: all other materials within the zone should be removed within the normal response time for that zone.

Special considerations apply to zones 1-5 only. Special Considerations do not apply to Zone 6, these have already been taken into account in the extended response times applied to zone 6.

More information on zoning.

**Examples where special considerations apply could include:**

- Steep embankments
- Waterways
- Operational railway land (other than zone 6)
- Roads (other than zone 6) which require traffic management
- Vastly overgrown derelict land where safety and access need to be considered
- Removal of adhered chewing gum
- Removal of trapped litter requiring special equipment, for example to unblock drains

These are examples only; duty holders need to be able to justify their reason for applying special considerations. The times provided are the maximum times to restore land; however, duty holders should endeavour to restore an area as soon as is reasonably practicable to do so within the response time period.

## **Other Considerations**

Response times are subject to overriding requirements where regulations and procedures of relevant legislation must be adhered to e.g. Health and Safety, traffic management, sites of special scientific interest. Generally, these considerations have been taken into account in the times provided as much as possible.

Bodies should also recognise their duties under The Bathing Waters (Scotland) Regulations 2008, where pollution by litter and refuse is of risk to bathers' health and safety. Remediation should take place within the response times indicated above or within a maximum of seven days, whichever is a lesser time period.

## **Compliance**

Under Section 91 of the Environmental Protection Act 1990, the public can refer to the Sheriff Court if they think a duty holder is not keeping an area litter or refuse free. If the Sheriff Court concludes the duty holder is in breach of the duty, they may then make a Litter Abatement Order requiring the Duty Holder to restore the land to a grade A within a specified time.

Under Section 92, a principal litter authority can refer another duty holder to the Sheriff Court for dereliction of the duty and have a Litter Abatement Notice served on the Duty Holder.

## **6 Practical Considerations**

### **Practicability**

Duty holders are required to fulfil the duties as far as is practicable. This means they should put in place all reasonable measures to ensure they meet their duty within the timescales, where feasible to do so.

A court is likely to look at all the circumstances of a case, including resources. It is up to the duty holder to ensure that appropriate resources are put in place to allow them to fulfil the duty and be able to evidence compliance.

Some examples are included below but it is up to the courts to decide on a case by case basis if a duty holder has, or has not, discharged its duty on the grounds that it is impracticable to do so.

Some conditions or situations can make meeting the timescales impracticable. These include:

- Extreme weather
- Accessibility e.g. construction work
- Regard to other legislation is to be considered e.g. SSSI or Health and Safety
- Certain land types where it is not possible to meet a grade A standard at all times

Every effort must be made to meet the duties as far as is practicable and once conditions making it difficult to do so within the timescales have been resolved, duty holders should endeavour to restore the area as soon as possible.

## **Resourcing**

Duty holders should identify the resources they need to enable them to meet their duty. Approaches will differ so there is no set guidance on this. It is recommended that duty holders share best practice and, if possible, identify opportunities to share resources that will maximise impact and efficiency.

Duty holders may not have resources in place outside of normal operational hours to restore land to grade A within some of the shorter response times. To account for this, the following times are discounted for assessing compliance:

- 20:00-06:00
- Christmas Day and New Year's Day

However, where the standard falls to an unacceptable level during those times, every effort must be made to restore the land to an A grade by 08:00 the next working day.

Online resources and more information on best practice are available in the [Litter Knowledge Network](#).

## **Monitoring Compliance**

All duty holders need to be able to evidence that they are meeting the required standard for the duty or duties they hold.

Zones, grades and response times provide duty holders with a framework within which to evaluate their performance and take action.

Monitoring activity allows duty holders to:

- Evaluate performance and effectiveness
- Identify issues which need further action
- Show how they've complied with their duties
- Target prevention effectively

[Further guidance on monitoring can be found here](#)

## **7 Partnership approach**

It is recommended that duty holders adopt a partnership approach to fulfilling their duties. This can be with other duty holders or other relevant stakeholders.

### **Example 1 - Local Authorities and Road Operating Companies**

Develop a partnership working arrangement to ensure there is synchronisation of each organisation's work schedules. This can reduce or avoid issues such as shredding of litter materials during verge cutting, and allow local authorities access to trunk roads to remove litter and refuse during traffic management required for other purposes.

### **Example 2 - Duty holders and other land managers/organisations**

Community Litter Prevention Action Plans encourage land managers and organisations to work together proactively to prevent and manage litter and refuse effectively and efficiently.

### **Example 3 - Neighbouring Duty Holders**

Where duty holders have neighbouring boundaries, joint agreements could be used to ensure the boundary is maintained efficiently. This could include agreement to maintain land beyond a boundary line where there is a clear rationale for doing so or sharing resources to extend the impact of preventative action across boundaries.

### **Example 4 - Internal partnerships**

Identifying opportunities to work with other service providers within your own organisation to ensure land is maintained efficiently. For example, planners take account of maintenance requirements when designing new infrastructure to avoid litter becoming trapped; or avoiding escaping materials becoming litter by working with waste management colleagues to avoid unintended consequences.

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