



SCOTTISH EXECUTIVE

Environment Group

# REVIEW OF THE LITTER AND FLYTIPPING PROVISIONS OF THE ENVIRONMENTAL PROTECTION ACT 1990

## Scottish Executive Response

### Background

The Scottish Executive commissioned this review with the purpose of ascertaining if the current legislation relevant to litter and flytipping, contained within the Environmental Protection Act 1990, is effective and achieving its purpose. Another important element of the study was to confirm if the legislation was being fully utilised by local authorities. The consultants Environmental Resources Management (ERM) were commissioned to carry out the study and an Advisory Group was formed to oversee its progress. The group consisted of representatives from COSLA, the Scottish Environment Protection Agency (SEPA), Keep Scotland Beautiful (KSB) and the Scottish Executive.

### Key Scottish Executive actions

The report found that there are no fundamental difficulties with the way litter and flytipping law is framed but it is not used as widely or as effectively as it might be. Its recommendations therefore concentrate on ways of improving use of existing legislation. Its main recommendation with regard to litter is that straightforward, clear guidance for the regulators and others, supported by standard tools to facilitate implementation should be provided. **Therefore the Scottish Executive is providing £120,000 to update the current Code of Practice on Litter and Refuse and to provide guidance on its implementation.** The new Code of Practice, tailored to specific Scottish conditions, will provide duty bodies, stakeholders and the public with clear, concise information and guidance on responsibilities and powers available.

On the subject of flytipping, the report highlights the lack of a basic model agreement on co-ordination and collaboration between regulators and the difficulties of identifying and pursuing offenders. **Therefore the Scottish Executive is providing £90,000 for the establishment and service of a Scottish Flytipping Forum consisting of all the key stakeholders.** In conjunction with its other aims and targets, the forum will be charged with developing and agreeing a model agreement between regulators that will improve current practices.

The majority of the recommendations contained in the report will be addressed by the actions above; however, further investigations are to be made into possible legislative changes suggested in the report, which will provide stronger deterrents to litter offenders and strengthen statutory bodies' ability to enforce litter laws. Fixed Penalty Fines are an important aspect of deterrence. **Therefore, as recommended in the report, the Scottish Executive intends to increase the current Fixed Penalty Fine for littering from £25 to £50.** Introducing a higher tariff than this, as has been suggested in the past, may result in greater levels of non-payment. However there appears to have been no growth in levels of non-payment in England and Wales where an increase to £50 was implemented last year, suggesting that this level of increase would not have the self-defeating effects which a higher tariff may potentially have.

The development of a standard key performance indicator for local authorities is the final recommendation in the report. **The Scottish Executive has committed £150,000 to pay for the first year costs for all local authorities in Scotland to participate in the Local Environmental Audit and Management System (LEAMS).** The scheme will commence on 1 April 2003 and the results are to be published by the Accounts Commission. The LEAMS process will offer a cost effective and operationally sound methodology to create a Performance Indicator for street cleanliness based entirely on the Code of Practice on Litter and Refuse. Ultimately, it is the Executive's intention to have the results published annually. The Executive firmly believes that there is a need for a robust and effective cleanliness performance measure under "Best Value" to measure levels of cleanliness and underpin continuous improvement.

Brief individual comments to each recommendation are listed below:

No.	Recommendation	Scottish Executive Response/Comment
1	Clear simple guidance on the provisions of the law on flytipping and litter and its practical application should be prepared for the regulatory bodies, duty bodies, other landowners, occupiers and managers, and the general public. This should be in the form of a series of linked leaflets dealing with the implications of the law for each audience and should emphasise the range of duties that apply and remedies that are open to different parties.	The Scottish Executive is providing £120,000 funding to update the existing UK wide "Code of Practice on Litter and Refuse". Production of a series of guidance leaflets was considered to be insufficiently focussed. Updating the Code of Practice to take into account devolved aspects of legislation and Scottish procedures which may differ from the rest of the UK, will allow regulatory and duty bodies, other landowners, occupiers and managers, and the general public to access the relevant information from one main document. KSB has been commissioned to co-ordinate the updating of the Code of Practice.
2	Current training provisions for SEPA and local authority staff should be reviewed, and updated and new training co-ordinated with the issue of new guidance.	It is a matter for local authorities and SEPA to identify training needs among their staff. The Scottish Executive currently provides annual funding of £234,000 to KSB who already run training programmes for local authorities such as the People & Places Programme.

3	A model agreement between local SEPA offices and local authorities should be developed covering action in the event of detection or reporting of flytipping. This should identify contacts and contact arrangements, set out principles on which organisation should take the lead for particular types of event, identify whether and how the other organisation should provide support and assistance, and provide tools to support both organisations in exercise of their duties. Drafting and local implementation of the agreement will require significant participation from both SEPA and local authorities as well as the Scottish Executive.	The Scottish Executive is providing £90,000 for the establishment and service of a Forum that will consider all aspects of flytipping in Scotland. The Forum will consist of key Scottish stakeholders and its main aims will be to (a) minimise the extent of flytipping throughout Scotland, (b) measure the extent and cost of flytipping in Scotland and (c) increase awareness on the part of the general public of how to report incidences of flytipping. Part of the funding will also provide for the creation of a National Flytipping Officer who will co-ordinate the Forum's work. The Forum will also be charged with developing a model agreement which will define "best practice" methods for statutory bodies in dealing with flytipping.
4	The option of establishing a shared on-line database for reporting and dealing with flytipping should be investigated.	This will be covered by the action at 3. above.
5	A study should be carried out to investigate the level of resources applied by local authorities and SEPA areas to deal with flytipping offences and removal of flytipped waste to examine the effectiveness of use of those resources and to prepare best practice guidance.	This will be covered by the action at 3. above.
6	Options for dealing with flytipping around civic amenity sites should be investigated further including clarifying responsibility and resources for clearing waste around the entrance and altering opening hours to better suit demand.	This will be covered by the action at 3. above.
7	The option of extending the "one witness" provision under Section 87(7) to Section 33 should be investigated further. In the meantime it would be helpful if the guidance for regulators included an explanation of, and guidance on, the standard of evidence required by the Scottish Courts.	The Scottish Executive will investigate the impact of the "one witness" provision in the Dog Fouling (Scotland) Bill 2003. Advice on the standard of evidence required by Scottish courts will be covered by the action at 1. above.
8	The option of SEPA appointing selected local authority staff as waste regulation inspectors through powers available under Section 68(3) of the Environmental Protection Act (EPA) 1990 should be explored further to determine whether this can be implemented directly or requires changes to primary legislation. If this proves not to be feasible other routes to providing the necessary powers should be explored.	This will be covered by the action at 3. above. The Forum of key stakeholders will be asked to consider whether this option is feasible.
9	As part of the model agreement between the regulators, local authorities and SEPA should be encouraged to collaborate in gathering evidence allowing prosecution under section 33 and section 34 of EPA 1990.	This will be covered by the action at 3. above. The Forum will also be asked to consider whether this option is feasible.

<b>10</b>	Consideration should be given to increasing the level of the Fixed Penalty Notice, to introducing a two-tier system for late payment and to setting differential fines for different offences. The effect of the recent increase in England and Wales on levels of non-payment should be checked. The ability for local authorities to set the level of penalties at a local level, should be investigated further.	The level of Fixed Penalty Notices will be increased from £25 to £50. There has been no noticeable increase in the level of non-payments since this increase was introduced in England and Wales. No plans at present to introduce a two-tier system for late payment. Will consider this option further after observing its effectiveness with regard to dog fouling offences.
<b>11</b>	Guidance on Fixed Penalty Notices should identify the range of circumstances in which they may be used, including improper presentation of trade waste. In providing this it will be important to clarify what type of evidence is required in Scots Law.	This will be covered by the action at 1. above. During the updating of the Code of Practice, clarification of the evidence required will be confirmed.
<b>12</b>	The feasibility of introducing powers for local authority authorised officers to demand names and addresses should be investigated further. In the meantime local authorities and the Police should discuss and agree feasible mechanisms for communication in the event that authorised officers require the assistance of the Police in obtaining names and addresses.	This will be a matter for each individual local authority to consider. The action at 1. above will however, include reference to this option and invite local authorities to consider it.
<b>13</b>	The option of extending Section 88 Fixed Penalty Notice powers to the police should be investigated further. The possibility of including a provision in the Dog Fouling (Scotland) Bill to extend its Fixed Penalty Notice powers for the Police to littering as well could be explored.	The impact of extending Fixed Penalty Notice powers for the police with regard to dog fouling will be scrutinised.
<b>14</b>	Local authorities should prepare and use a standard letter to parents in cases of littering by under-16 year olds. This could be included in new guidance on littering and based on examples already in use around Scotland.	Local Authorities issuing a letter to parents would appear to be an effective alternative to referring the offence to the Children's Panel for prosecution. This option will be included in the action at 1. above.
<b>15</b>	Local authorities and the Police should discuss and agree mechanisms for communication in the event that authorised officers require the assistance of the Police in stopping vehicles from which litter has been dropped.	This will be a matter for each individual local authority to consider. The action at 1. above will however, include reference to this option and invite local authorities to consider it.
<b>16</b>	The option of applying the provision in Section 33(5) regarding flytipping from a vehicle, to littering from a vehicle, thus making the registered owner of the vehicle responsible, should be investigated further.	This will be considered further in the light of legal and specialist advice
<b>17</b>	The difficulties arising from the split in responsibilities for non-special trunk roads should be resolved. Various options should be investigated further with the Scottish Executive Trunk Roads Department, including the possibility of transferring responsibilities by agreement.	This will be considered further in the light of legal and specialist advice.
<b>18</b>	A particular focus of any new guidance on flytipping and litter should be a simple and clear explanation of the various powers available to local authorities and others to remedy litter and the procedure required for each.	This will be covered by the action at 1. above.

19	The availability of the Litter Abatement Order procedure should be widely publicised with emphasis on using the prior warning step as an effective measure, avoiding the necessity for payment of the £50 fee. The scope for reducing or eliminating the fee should be explored further. Published guidance should be made available by the Sheriff Court.	Further investigation will be required into this recommendation and if required, any resultant changes will be included in the action at <b>1.</b> above.
20	The target timescales in the Code of Practice should be reviewed to ensure they are reasonably practicable for duty bodies.	The comments contained within the report regarding the timescales within the current code of Practice have been noted and will be reviewed during the action at <b>1.</b> above.
21	Any new guidance on flytipping and litter should include advice on reporting to the Procurator Fiscal including standard reporting formats designed specifically for flytipping and litter offences. These should be designed in accordance with Crown office Reporting Guidelines, to provide the Procurator Fiscal with the particulars of the accused, circumstances of the offence, a brief statement of the relevant law, a simple and clear statement of the case and the evidence, and a request for the appropriate course of action.	This will be covered by the action at 1. above.
22	A standard key performance indicator for local authorities and all other duty bodies should be developed for litter and reported at intervals by Audit Scotland. This should take account of the differing circumstances of local authorities (e.g. urban-rural mix).	The Scottish Executive has committed funding of £150,000 to initiate the pilot scheme LEAMS (Local Environmental Audit and Management System). All 32 LAs have agreed to participate and its aim is to provide Statutory Performance Indicators for the standard of cleanliness of streets and pavements. LEAMS will offer a cost effective and operationally sound methodology to create a Performance Indicator for street cleanliness based entirely on the Code of Practice on Litter and Refuse. 18 out of the 32 Scottish Local Authorities are already using some form of this cleanliness index methodology under the KSB People & Places Programme. The Executive firmly believes that there is a need for a robust and effective cleanliness measure under "Best Value" to measure levels of cleanliness and underpin continuous improvement.

## **Analysis of Final Report**

It is clear from the report findings that for various reasons, the existing legislation relevant to litter and flytipping is not being fully utilised. The main reasons suggested are a lack of clear understanding of the powers available, of clear guidance (particularly with regard to enforcement procedures), and the resource implications for statutory bodies. However it is also clear that the existing legislation, when utilised properly can be effective. Some areas of the legislation may require updating and clarification, particularly with regard to flytipping, but the report confirms that the necessary powers are generally already in place and available to duty bodies. The Scottish Executive, however, recognises the need for improved guidance to all key stakeholders in using the powers and for the need to ensure that the public is made more aware of the legislation. We are accordingly making available substantial resources to carry out a thorough overhaul of existing guidance and provide clear, practical focussed information, tailored to Scottish needs, to enable duty bodies to carry out their responsibilities effectively. It is clear from the report that, if given such tools, duty bodies should be able to make a major impact on the problem of litter and fly tipping.

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