

PREM 19/2972

Confidential Filing

The litter Problem

WK 2000

Environmental Protection Bill:  
including Recycling, Crown Immunity + Dogs

ENVIRONMENTAL  
AFFAIRS

Part 1: Dec 85

Part 2: May 1989

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
<del>17.5.89</del>							
<del>13.7.89</del>							
<del>19/7/89</del>							
<del>1.9.89</del>							
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<div data-bbox="16 1839 223 2016" data-label="Text"><p>PART 2 ENDS</p></div>							

● PART 2 ends:-

SS/ENV to CAS 26.7.90

PART 3 begins:-

CAS to PM 9.8.90





CAS 87r

NB+M 43

CCP

Pl awaiting  
reaction from other  
5 Maps before meeting  
Deadline is 17/8.

2 MARSHAM STREET  
LONDON SW1P 3EB  
071-276 3000

My ref:

Your ref:

The Rt Hon Malcolm Rifkind QC MP  
Scottish Office  
Dover House  
Whitehall  
LONDON  
SW1

AN

26 July 1990

Dear Secretary of State

THE NEW LITTER DUTIES AND COMPETITIVE TENDERING FOR LOCAL AUTHORITY SERVICES

Thank you for your latest letter of 17 July to Michael Portillo on this subject. As you know, we have now gone ahead with an announcement on the lines proposed by Michael in his letter of 9 July.

Michael indicated in his letter of 18 June that we were still thinking how best to handle the impact of the new litter duty on those authorities who had already either let contracts to the private sector or assigned services to their DSOs following competition under the terms of the Act before 1 April next.

There is a clear dilemma here. We have announced our intention of bringing the code into force on 1 April 1991. After then an authority would be liable to challenge in the courts if it were not providing a service up to the required standard. But in most cases the terms of its contracts or agreement with the DSO will be based on a lower specification. The recent Coopers and Lybrand study showed that out of a sample of 20 authorities, 5 were likely to incur cost increases of some 0-14% on implementing the code, 6 increases of 15-30% and 6 increases of 43-111%.

The simplest option would be to allow existing agreements to run their full course before the new duty is applied to any individual authority. I do not however believe that this solution is acceptable. It would mean that implementation was delayed for between two and five years after 1 April 1991. The public would not appreciate a situation in which some areas benefitted immediately from the code whilst others had to wait as long as this.



### Private Sector Contracts

If we rule this out but do nothing else, then the result, as far as private sector contracts are concerned, would be to put authorities at the mercy of the contractors who would be able to negotiate from a highly advantageous position and demand a high price for incorporating the new standards. But the alternative option of overriding existing contracts so that authorities could repudiate them without being sued for damages in order to retender on a new basis, taking account of the code, would be even more unacceptable. It would mean that we were legislating to frustrate contracts freely entered into by mutual agreement between the parties - something for which I think of no precedent.

I have come to the conclusion, therefore, that we must seek a compromise, under which authorities would be required to use their best endeavours to renegotiate private sector contracts where necessary to meet the standards of the code. But it would be a defence against a breach of the duty if the authority could show that it had made reasonable efforts to comply but failed to reach agreement with the contractor, eg because his price was unacceptable or he simply declined to take on the extra work. In this way, not only would the authority be under an obligation to do its best to propose a price but the contractor would have every incentive to reach agreement on terms which would increase his business but not be regarded as unreasonable by the authority.

### DSO "contracts"

Turning to "contracts" won by the DSOs themselves (which has been the result of some 80% of cases) I believe that it would be fatal to remove the requirement that authorities must comply with the terms of the specification on the basis of which the work was awarded to them under competitive tendering. This option, as you point out in your letter of 22 June, would provide an escape hatch for DSOs who had only won their competition by bidding too low. It would, indeed undo at a stroke much of what we have achieved through the competition legislation. We cannot expect authorities to negotiate rigorously with their own DSOs.

I believe, therefore, that the only feasible option is to require those authorities which cannot meet the standards of the code under existing agreements with their DSOs to re-submit their street cleansing services to competition. I appreciate that both you and Ian Grist have expressed considerable misgivings about such a solution, but I see this as the only way of reconciling a reasonably prompt and orderly implementation of the code with the need to preserve the benefits which we have already obtained from the competition legislation.

It would of course be for each authority to reach its own decision on whether they could meet the requirements of the code under the existing agreement. If they could retendering would not be necessary.



The retendering would clearly need to be timed so as to minimise the disruption for authorities and contractors. We have, in fact, made some preliminary soundings on this point with the association representing the contractors, and they have indicated that they would prefer to see smaller groups of authorities conducting tendering exercises at more frequent intervals - two months instead of the 6 months adopted for the original programme. They have suggested a programme of this kind spread over the 12 months from 1 March 1992. Alternatively, we could set a deadline no later than 3 years after the original deadline for authorities to complete re-tendering to the new standards.

Some authorities will doubtless urge that it is wasteful and unfair that they should conduct further tendering exercises so soon after the initial ones. There is a difficult balance to strike between early application of the Litter Code and the cost and trouble of further tendering. I am inclined to require retendering at 3 monthly intervals from March 1992 (following the last of the initial rounds on 1 January 1992) finishing on 1 September 1993. This would involve splitting the first three large groups into six smaller groups.

I hope that we can reach agreement on an approach on these lines - for private sector contracts, a requirement on authorities to use their best endeavours to reach agreement with the contractor on a specification which will achieve compliance with the code and a defence against challenge in the court if the authority have made reasonable efforts to secure such agreement; and for services assigned to the DSO, a requirement to retender if the authority believes that it is not possible to comply with the code on the basis of the existing agreement.

I should be glad to know by 17 August if you and colleagues agree with these proposals. We would then prepare and table an amendment to the Environmental Protection Bill at Report Stage in the Lords which is scheduled for October. Much of the detail could be left to regulations as this would be essentially a transitional provision.

I am copying this letter to the Prime Minister, the Lord President, the Lord Privy Seal, Peter Lilley, David Hunt, Norman Lamont, Cecil Parkinson, First Parliamentary Counsel and Sir Robin Butler.

Chris Bush

PP CHRIS PATTEN

(approved by the Secretary of State and signed in his absence)

ENV AFFAIRS: Litter Pt 7.







Minister for Local Government  
and Inner Cities

*NRM  
CS*

Department of the Environment  
2 Marsham Street  
London SW1P 3EB

*ccps*

Telephone 01-276 3000

20 July 1990

*Dear Malcolm*

*File with  
CS*

**THE NEW LITTER DUTIES AND COMPETITIVE TENDERING FOR LOCAL  
AUTHORITY SERVICES**

Thank you for your letter of 17 July responding to mine of 9 July about the timing of future rounds of competition for street cleaning services in the light of the new Code of Practice on litter.

I can confirm that the timetable for finalising the Code of Practice is going ahead well on schedule and I have therefore now made arrangements for the PQ to be tabled.

I am copying this letter to the Prime Minister, Peter Lilley, David Hunt, Norman Lamont and Cecil Parkinson.

*Yours ever*

*Michael*

MICHAEL PORTILLO

The Rt Hon Malcolm Rifkind QC MP



ENV AFFAIRS: LITER P+ 2







2.5 PM  
BHP  
7/17  
cc: [unclear]

SCOTTISH OFFICE  
WHITEHALL, LONDON SW1A 2AU

Michael Portillo Esq MP  
Minister for Local Government  
and Inner Cities  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

17 July 1990

Dear Michael,

attach

Thank you for your letter of 9 July about the new litter duties and competition policy for local authority services.

I still consider that the timetable you are proposing may be too tight. Any slippage beyond October in finalising the Code of Practice could force local authorities to cut back on the normal 10 month competitive tendering cycle for example by restricting the period allowed for the submission of tenders and/or the time allowed for gearing up between the award of the contract and the start date for the work. If that happened private contractors could be expected to submit complaints alleging anti-competitive behaviour by authorities whose response would be that they had no choice if they were to meet the statutory timetable laid down by the Government.

A slightly longer deferment of the timetable, as suggested in my letter of 22 June, therefore remains my preferred option. However, provided you are confident that the timetable for finalising the Code of Practice can be maintained, I am prepared to go along with the timetable which you propose and for the decision to be announced by means of the draft PQ enclosed with your letter.

I am copying this letter to the Prime Minister, Peter Lilley, David Hunt, Norman Lamont and Cecil Parkinson.

Yours ever,  
Malcolm Rifkind

MALCOLM RIFKIND



12 July 1990

BF 13/7

ENFORCEMENT OF LITTER LEGISLATION

Kate Bush's letter of 11 July to you refers.

*file into CSR*

There are two issues:

- enforcement of litter fixed penalty notices generally, and the role of the police in this;
- using fixed penalties for littering on motorways, where only the police could enforce them.

Background

There was a fair amount of correspondence on this last year, ending with your letter of 18 December. The key points were:

- the Home Secretary thought it would be inappropriate for the police to have power (alongside local authorities) to issue litter fixed penalty notices: on the grounds that this would involve the police in new work (existing offences being largely unenforced);
- Chris Patten accepted this, but, remaining concerned about effective enforcement, said that DOE would discuss with the Home Office what help the police could give local authorities on enforcement short of statutory changes;
- the Prime Minister iterated several times her strong concern about effective enforcement. She specifically reserved her position on police powers to issue fixed penalties pending the outcome of the DOE/Home Office discussions on what "non-statutory" help the police could give;
- the Prime Minister also emphasised her particular concern about littering on motorways and suggested the possibility



of using fixed penalty powers in this case as well as in the streets generally. (On motorways, only the police could issue fixed penalties.)

Apart from fixed penalties, littering of course remains a criminal offence under the Litter Act 1983. Colleagues agreed last year that, to demonstrate the seriousness of the offence, the maximum fine should be increased to Level 4 (£1000). This is the same, for example, as for careless driving.

#### COMMENT

This latest report from DOE hardly moves things forward. The proposed "non-statutory" help in reality amounts to very little, and is stated as being dependent upon the discretion of the chief officers concerned. It would remain open to them to say no, and they will presumably tend to say that they have better things to do. On motorways, the police just don't seem to want to know, although they would not hesitate to pursue motorists for driving-related Level 4 offences.

This is bound to leave enforcement considerably weakened. On motorways it will in practice be non-existent. In public places generally it will mean that local authority enforcement arrangements will have to be stepped up; and the resource costs of this, especially in the present climate, will mean that many, if not most local authorities will decide not to introduce fixed penalty schemes. The Prime Minister's concern on enforcement will not be met.

The wider point is that the Home Office's stance, which clearly reflects police views, has the effect of treating littering as a 'second-class' offence which the police ought not to have to waste its time on. It is doubtful whether the police take any real steps now to enforce the Litter Act 1983, except in wholly blatant and exceptional circumstances, or when a persistent member of the public makes a complaint. Yet the very purpose of the new rules on littering are designed to bring home the seriousness of the offence, as also is the Level 4 maximum fine.



If the police are content to pursue someone down the motorway for 'careless driving', then there is no logical reason why they should not do the same for littering. In both cases there will be times when enforcement is impracticable. But that is not an argument against having the power. The attitude on display at the moment is akin to the police's initial reluctance to enforce measures to prevent football hooligans from travelling abroad.

#### CONCLUSION AND RECOMMENDATION

The Home Office needs to be asked for its own version of the situation before the Prime Minister comments. But assuming it is as reported by DOE, the Home Secretary needs to be pressed further on the role of the police.

At the very least, it should be ensured that powers are available in the Environment Protection Bill to enable the police to issue fixed penalties, even if in practice this may have, for resource reasons, to be at differing levels of activity according to time and place. But they should not be allowed to get off the hook altogether.

In putting this to the Home Secretary, the Prime Minister may also care to ask how and to what extent the police currently undertake their duty to enforce the Litter Act 1983. A fixed penalty system is really just another way of doing that. There is nothing new about the offence itself.

*John Mills*

JOHN MILLS



ENV AFF: Letter Pt 2

CONFIDENTIAL



BF 12/7  
MS

celu

2 MARSHAM STREET  
LONDON SW1P 3EB  
071-276 3000

My ref:  
Your ref:

Caroline Slocock  
Private Secretary to  
The Prime Minister  
10 Downing Street  
LONDON  
SW1A 2AA

11 July 1990

Dear Caroline  
Alex.

ENVIRONMENTAL PROTECTION BILL: ENFORCEMENT

In December you wrote to me outlining the Prime Minister's thoughts on a number of litter issues, specifically the role of the police in enforcing that part of the legislation dealing with fixed penalty notices. I attach a copy of your letter.

Officials here have been discussing with the Home Office the level of 'non-statutory' assistance the police might be able to give. The Home Secretary has agreed to write to the Association of Chief Police Officers seeking their agreement to reinforce local authority litter enforcement in certain circumstances - for example, when a local authority is running a short intensive anti-litter campaign, the police might be asked to offer support. The extent of the support would be at the discretion of the chief officer concerned.

Your letter also raised the question of applying fixed penalty powers for littering on motorways, the enforcement of which could only be in the hands of the police. The Home Secretary has strong reservations about this proposal. Police resources for patrolling motorways are already stretched. In addition, issuing notices may involve the pursuit of the offender down the motorway. In his view, this procedure can only really be justified for road safety purposes or where there has been a serious criminal offence, not where a motorist throws a cigarette packet out of his car window.

I am copying this letter to the Private Secretaries to the Home Secretary, the Secretary of State for Transport, the Secretary of State for Scotland, the Secretary of State for Wales and the Private Secretaries to the Law Officers.

Yours  
Kate

KATE BUSH  
Private Secretary

ENV AFFAIRS: W/Her 142.



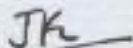
11 July 1990

NEW LITTER DUTIES AND COMPETITIVE TENDERING

Michael Portillo's further letter of 9 July to Malcolm Rifkind.

It would be useful if the Prime Minister is able strongly to endorse Michael Portillo's view that the timetable extension for competition tendering should be seven months only, and not a whole year as Scotland and Wales are arguing. As I indicated in my note of 20 June, even the short delay does present dangers as to the loss of cost savings accruing from competitive tendering, especially for Brent, Lambeth and Southwark. But it certainly should be no longer than seven months.

It would also be useful to add to the draft PQ answer details of how many from each of the two groups of councils concerned (that is, two groups of 80 each) have already gone over the competitive tendering for street cleaning, well ahead of the deadline. This would enable one to argue that the time extension was less significant, in terms of cost savings foregone, than might otherwise have been assumed. It may also, as a by-product, reveal an interesting list of 'efficient' versus 'inefficient' councils for future reference.

  
JOHN MILLS





Minister for Local Government  
and Inner Cities

Prime Minister

This is a sensible compromise  
inimitable agreed with the Treasury.  
To avoid undue extra burden on  
LAs - while ensuring the benefits  
of contracting-out come in  
as soon as practicable.

Department of the Environment  
2 Marsham Street  
London SW1P 3EB

Telephone 01-275 3000

09 JUL 1990

PAH  
10/7

mt

Dear Malcolm

THE NEW LITTER DUTIES AND COMPETITIVE TENDERING FOR LOCAL  
AUTHORITY SERVICES

Thank you for your letter of 22 June on this subject. I am grateful also for the replies received from Ian Grist, Norman Lamont and Nicholas Ridley.

I have given a good deal of thought to what you say about the case for putting the next round of tendering back to 1 January 1992 rather than August of next year, and I accept that, as both you and Ian have pointed out, the timetable which I have proposed is a tight one.

Nevertheless, I believe that it would be unnecessarily cautious to allow more than a year from the publication of the Code in October, especially since the outline of our requirements is now well known.

I still believe, therefore, that it would be right to go ahead on the basis proposed in my letter and that the longer postponement which you have suggested would seem a very real danger of undermining the impetus of the competition programme.

I enclose a draft PQ setting out a decision on those lines and I hope that you will agree that we should now go ahead on that basis. We need to make the announcement as soon as possible and I should therefore be glad to have your response by Monday 16 July.

I am copying this letter to the Prime Minister, Nicholas Ridley, David Hunt, Norman Lamont and Cecil Parkinson.

Yours ever

Michael

MICHAEL PORTILLO

The Rt Hon Malcolm Rifkind QC MP





INSPIRED PQ AND ANSWER

QUESTION:

To ask the Secretary of State for the Environment what consideration he has given to the current timetable for competitive tendering for street cleaning services in the light of the proposed Code of Practice on Litter under the Environmental Protection Bill.

ANSWER:

A number of authorities are now making preparations to let contracts for street cleaning from 1 January 1991. We have proposed, in the Environmental Protection Bill, that there should be a new litter duty on local authorities from 1 April 1991, and that, in fulfilling that duty, authorities should have regard to standards contained in a Code of Practice. While consultation on that Code is well advanced, it is not yet in its definitive form, and I recognise that authorities cannot easily settle the basis for new street cleaning contracts until the standards are finalised. In the case of those authorities to whom the deadline of 1 January 1991 currently applies, I intend, therefore, to substitute a later deadline of 1 August 1991. In the case of those authorities to whom the deadline of 1 August 1991 currently applies, I intend to substitute a later deadline of 1 January 1992. In the case of those authorities to whom the deadline of 1 January 1992 applies, I intend to make no change to the deadline. I shall bring forward regulations to give effect to these changes.

My rt hon Friends, the Secretaries of State for Scotland and Wales, will be making similar arrangements in respect of the competitive tendering deadlines applicable to authorities in those areas.





7.0 P.M.  
BHP  
26/6

cel. y.

Treasury Chambers, Parliament Street, SW1P 3AG

Michael Portillo Esq MP  
Minister for Local Government and Inner Cities  
Department of the Environment  
2 Marsham Street  
London  
SW1P 3EB

25<sup>th</sup> June 1990

*Don Hubel*

THE NEW LITTER DUTIES AND COMPETITIVE TENDERING FOR  
LOCAL AUTHORITY SERVICES

*file with CAS*

Thank you for your letter of 18 June 1990, proposing a relaxation in the deadlines by which groups of local authorities should tender for street-cleaning.

I am naturally disappointed whenever there are delays in introducing competition into local authority services. But I appreciate the practical difficulties, and on balance I can see that there may be dangers in enforcing deadlines shortly after the Code of Practice on litter has been published. For example, it would be unfortunate if the costs of re-negotiating street-cleaning contracts added to local authority expenditure.

I am therefore prepared to go along with your proposals to relax the deadlines.

I am copying this letter to the Prime Minister, Malcolm Rifkind, Nicholas Ridley, David Hunt, and Cecil Parkinson.

*Norman Lamont*

NORMAN LAMONT



ENV AFF  
WHEV  
PT2



RESTRICTED



n.b.p.m.  
PHO  
25/6

coll.

Y SWYDDFA GYMREIG

GWYDYR HOUSE

WHITEHALL LONDON SW1A 2ER

Tel. 071-270 3000 (Switslwrdd)  
071-270 (Llinell Union)  
Fax: 071-270 0568

*Oddi with yr Is-Ysgriennydd Seneddol*

WELSH OFFICE

GWYDYR HOUSE

WHITEHALL LONDON SW1A 2ER

Tel. 071-270 3000 (Switchboard)  
071-270 (Direct Line)  
Fax: 071-270 0568

*From The Parliamentary Under-Secretary*

IAN GRIST MP

CT 4423/90

22 June 1990

R23/6

Dear Minister

PPS

THE NEW LITTER DUTIES AND COMPETITIVE TENDERING FOR LOCAL AUTHORITY SERVICES

Thank you for a copy of your letter of 18 June to Malcolm Rifkind on the potential problems we face over the impact that the new litter duties will have on the compulsory competition regime as it affects local authority street cleaning services.

I am in agreement with your proposal to defer the implementation of compulsory competition for those authorities who are scheduled to meet deadlines in 1991. Under current arrangements nine Welsh authorities are due to comply with the competition requirements for their Other Cleaning services by 1 January 1991, and a further nine are due to comply by 1 August 1991. The Welsh programme for Other Cleaning does not extend into 1992 as it does in England.

Even with deferral to 1 August 1991, local authorities will be faced with a very tight schedule to meet if, as indicated in your letter, the Code of Practice is not finalised until October 1990. They will have only 10 months to draw up or amend specifications incorporating provisions from the Code, advertise the contracts and comply with the other requirements of the Local Government Act 1988. Any slippage in the finalisation of the Code of Practice would severely prejudice the achievement of this programme and will have to be avoided if at all possible.

I know that you are giving further consideration to the question of how authorities will deal with litter duties in respect of contracts under the Local Government Act 1988 that will have already been awarded by 1 April 1991. I have to say that I have strong misgivings about any solution that requires local authorities who have already complied with the competition requirements of the Act in respect of Other Cleaning and who have won the work in-house, to re-submit the service to competition before they are able to make any adjustments, necessary to meet the enhanced standards required by the litter Code of Practice.

...It would involve

Michael Portillo Esq MP  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB



RESTRICTED



It would involve approximately 50% of Welsh authorities, and presumably the equivalent proportion of English authorities, subjecting the work to competition twice in under 2 years. Any such requirement will, I am sure be considered draconian and attract considerable criticism. The additional costs of re-tendering may also have adverse implications for community charge levels in the areas of those authorities involved.

I am copying this letter to the Prime Minister, Nicholas Ridley, Malcolm Rifkind, Norman Lamont and Cecil Parkinson.

Yours sincerely  
Hawk Pen.

APPROVED BY THE MINISTER  
AND SIGNED IN HIS ABSENCE

dti

the department for Enterprise

n.b.P.M.

RTP

22/6

*clp*

The Rt. Hon. Nicholas Ridley MP  
Secretary of State for Trade and Industry

Michael Portillo Esq MP  
Minister for Local Government  
and Inner Cities  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

Department of  
Trade and Industry

1-19 Victoria Street  
London SW1H 0ET

Enquiries  
071-215 5000

Telex 8811074/5 DTHQ G  
Fax 071-222 2629

Direct line

Our ref

Your ref

Date

071-215 5623  
PE4AZA

22 June 1990

*Dear Michael*

Thank you for sending me a copy of your letter of 18 June to Malcolm Rifkind concerning the new litter duties and competitive tendering for local authority services.

While I am keen that we should keep up the momentum towards competitive tendering for street-cleaning, I recognise that local authorities must have time to reflect the new standards to be laid down in the proposed Code of Practice on Litter in their invitations to tender. Those standards will also affect costs which contractors must have time to assess before making their bids.

I can therefore support the modification of the current deadlines in the way you propose.

I am copying this response to Malcolm Rifkind and to other copy recipients of your letter.

*Nich*



Recycled Paper



ENV AFF: Utter pr2





SCOTTISH OFFICE  
WHITEHALL, LONDON SW1A 2AU

Michael Portillo Esq MP  
Minister for Local Government and  
Inner Cities  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

22 June 1990

*Dear Minister*

Thank you for your letter of 18 June about the new litter duties and competitive tendering for local authority services.

I agree that it is too late to put back the date for work subject to competitive tendering by 1 August 1990. I agree also that, to enable authorities to have regard to the Code of Practice in discharging their litter duties, the best course would be to defer the timetable for work which is currently subject to competitive tendering by 1 January and 1 August 1991. I consider, however, that the revised timetable which you are proposing may be too tight. I understand that it is generally accepted that local authorities need about 10 months to complete the competitive tendering cycle. Since the Code of Practice is only expected to be finalised in October, a deferment from 1 January to 1 August 1991 would leave no breathing space in the event of any unavoidable delay in finalising the Code.

I do not think either, we should underestimate the amount of work which might be involved for authorities in amending detailed specifications which in some cases have already been drawn up. The Code will present a major challenge to authorities.

I suggest, therefore, that the 1 January 1991 deadline should be deferred until 1 January 1992. To preserve phasing, this would suggest deferment of the 1 August 1991 deadline to 1 August 1992. I appreciate that this would extend further the overall competition timetable but feel that this would be preferable to the risk of imposing a timetable on authorities which may be almost impossible for them to meet.

I note that you will be writing to me again about how best to tackle the interaction between the new litter duty and the requirements of the Local Government Act 1988 in respect of contracts that will already have been awarded. You may find it helpful to have my preliminary thoughts on the matter. We want to see the benefits which will flow from the new litter provisions in all authorities as soon as possible. However, to impose the



new standards where contracts have already been let would enable private contractors, where they had won the contracts, to hold authorities to ransom when negotiating terms for the additional work. Local authorities would undoubtedly claim that competitive tendering was supposed to save them money but that the Government were now putting private contractors in a position where they could virtually name their price. If we make it possible for authorities to modify contracts won by DSOs there is the same risk of DSOs naming their price and it would provide an escape hatch for DSOs who had bid too low and were in danger of failing to meet the 5% rate of return requirement. I would have even greater reservations about the alternative of forcing authorities, whose DSO had won contracts, to expose the work to competitive tendering for a second time. Local authorities would, undoubtedly protest that it was unfair to require them to go through the competition process again, particularly if contracts won by private contractors were not to be similarly treated. They would also object to the cost of a further round of tendering so soon after the first. My own view, therefore, is that allowing existing contracts to run is preferable to the disruption and expense of requiring authorities either to renegotiate or relet contracts, although I would regard renegotiation as a marginally less difficult and damaging option than reletting.

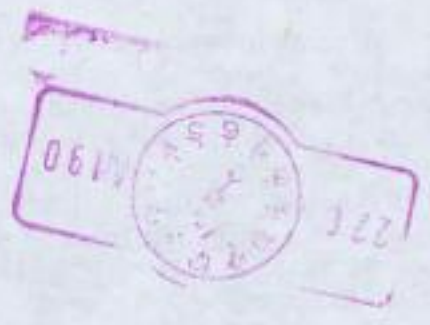
I am copying this letter to the Prime Minister, Nicholas Ridley, David Hunt, Norman Lamont and Cecil Parkinson.

*James Rix*

11 MALCOLM RIFKIND

*(Approved by the Secretary of State  
and signed in his absence)*

ENV AFF : UHUR pr2





**BARRY POTTER**

Note for the Record

Not submitted to P.M. on procedural grounds; any cost savings could be outweighed by errors must be covered promissorily.

Treasury advice it had to be allowed cost savings would be marginal & not 20 June 1990 if contracting out

JTP 21/6

NEW LITTER DUTIES AND COMPETITIVE TENDERING FOR LOCAL AUTHORITY SERVICES

Michael Portillo's letter of 18 June, copied to the Prime Minister, refers.

This proposes delaying, for 80 authorities in England, the requirement to subject street cleaning to competitive tender from 1 January 1991 to 1 August 1991. This is so that, in preparing contract specifications, they can properly take account of the new litter duty and litter code of practice which will be enacted in the Environmental Protection Bill.

As a consequence of this, a further 80 authorities with a tendering deadline of 1 August 1991 would have this date put back to 1 January 1992.

From the point of view of litter policy, this is reasonably sound. The authorities concerned will still, of course, be subject to the new duty whether or not services are contracted out.

But there are some contrary arguments which Michael Portillo does not address (and which I am not confident have been fully considered at official level in DOE).

First, the costs of delay. The Government continues, rightly, to make great play of the cost savings which accrue from competitive tendering. Any delay is bound to send out a wrong signal on this, ie that the Government is slowing down yet another key plank of policy, or that it does not really believe in the alleged cost savings.

That, however, is largely presentational. Much more important is that it means the benefits of competitive tendering for street cleaning will not be reflected, for the 80 authorities (and, in part, the whole 160), in their 1991 community charges. No doubt it will be said the individual sums are not large, but in the current situation everything counts.



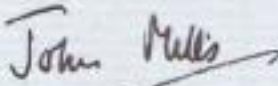
Moreover, local authorities are of one voice in saying that the new litter duties will impose higher costs. The Government stands to be wrong-footed by delaying the competitive tendering requirement for such a large group of authorities, because competitive tendering is the best answer to the higher costs argument.

Second, the authorities concerned. Each tranche of authorities in the competitive tendering programme was chosen, I am told, more or less at random. But the list of 80 authorities whose obligations would be delayed just happens to include, among 5 London Boroughs, Brent, Lambeth and Southwark. It also includes Wigan.

These are capped authorities and I presume that the caps have been set with full regard to attainable competitive tendering savings. It is just possible that this proposed change could be said by the authorities concerned to be a change in the goalposts. The Government would in effect be saying: we don't want you to obtain these benefits in the last quarter of 1991. The legal angle surely needs to be checked.

#### Recommendation

- Accept Michael Portillo's argument as regards litter policy.
- But ask him to assess the impact on 1991 community charge levels.
- And whether there are any legal implications for the current round of chargecapping, given that cost savings for capped authorities from January 1991 have presumably been taken into account in fixing caps.

  
JOHN MILLS





Minister for Local Government  
and Inner Cities

cc/m  
Department of the Environment  
2 Marsham Street  
London SW1P 3EB

Telephone 01-278 3000

18 JUN 1990

Jean Malcoln

THE NEW LITTER DUTIES AND COMPETITIVE TENDERING FOR LOCAL  
AUTHORITY SERVICES

Under the Local Government Act 1988 local authorities are required to subject a range of services to competitive tendering, in accordance with a timetable of deadlines extending from August 1989 to January 1992. One of these services is street cleaning. We need to act quickly to adjust these arrangements to take account of the new litter duties under the Environmental Protection Bill.

Under the Bill we propose to require local authorities to have regard to a Code of Practice in discharging their duty to remove litter. We have issued a draft of the Code for consultation, and are now considering comments received, but we expect that the contents will be finalised only in October. Nonetheless, we expect that the combined effect of the new duty and the Code will be to bring about an important raising of standards of litter control. They are due to come into force on 1 April 1991.

It is essentially through their street cleaning responsibilities that local authorities will discharge their litter duty. In England, over 150 local authorities have been required to subject their street cleaning work to competitive tendering by 1 August 1989 or 1 January 1990. We are still considering how best to handle the interaction between the new litter duty and the requirements of the Local Government Act 1988 in respect of contracts that will have already been awarded by 1 April next, and I shall write again about this shortly.

The next deadline for competitive tendering is 1 August 1990, when a further 80 authorities in England are required to have completed tendering procedures for street cleaning. In all but a few cases, those authorities will by now have decided on the award of the relevant contract, and their position with regard to the application of the new litter duty can be seen as the same as for those authorities subject to the earlier deadlines.



RECYCLED PAPER



A further 80 authorities are currently required to subject street cleaning to competitive tendering by 1 January 1991. We consider that it would be desirable to postpone this deadline to 1 August 1991, to give these authorities the opportunity to reflect the standards incorporated in the finalised Code of Practice in the specifications which they must prepare for competitive tendering. Clearly the slight loss of momentum on competitive tendering is a price we have to pay for the benefits of raising litter standards. As a consequence the 80 authorities currently subject to the 1 August 1991 deadline would have their date put back to 1 January 1992. The phasing of competitive tendering requirements was adapted in order to avoid over-loading the capacity of private contractors, and the contractors' organisation confirms that such an overload would be likely if some 160 authorities were tied to one deadline (of 1 August 1991). Currently, only 12 authorities are bound by the 1 January 1992 deadline, and there would seem no need to relax this deadline for them.

If you, and other colleagues agree these proposals, I should like to announce them at an early date, before authorities and contractors incur any more abortive work in their preparations for the 1 January 1991 deadline. Most will already have put out specifications under the procedure required by the Act. It will be necessary to make amending regulations to provide for the change in dates. Clearly, you and colleagues in Wales will wish to consider whether to make similar arrangements in your case. If you were not to do so we should have some difficult presentational issues to handle and we would need to confer urgently.

In view of the urgency, I would welcome a response by 22 June.

I am copying this to the Prime Minister, Nicholas Ridley, David Hunt, Norman Lamont and Cecil Parkinson.

Yours ever

Michael.

MICHAEL PORTILLO

The Rt Hon Malcolm Rifkind MP



RECYCLED PAPER



JL2/17



*copy*

ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

*NB PM AS*

The Rt Hon Christopher Patten Esq MP  
Secretary of State for the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

18 January 1990

*Dear Sir,*

Thank you for sending me a copy of your letter of 7 December to Geoffrey Howe. I have also seen David Waddington's letter of 11 January. *Har*

Whilst I have no direct departmental interest, I would like to express my support for David Waddington's arguments. I doubt whether the (unproven) benefits of registration outweigh the likely hostility from dog owners, particularly retired dog owners. I agree that there is a need to encourage a more responsible attitude to dog ownership, but I think that the proposed scheme is unlikely to contribute to achieving that aim.

I am copying this letter to the Prime Minister, Geoffrey Howe, other members of H Committee, Tim Renton and Robin Butler.

*Yours,  
JP*

ENV AFFAIRS : Liton ATZ







*Prime Minister<sup>2</sup>*  
*The Home Secretary*  
*also shares your*  
*doubts about the*  
*introduction of local*  
*registration schemes*  
*for dogs*

QUEEN ANNE'S GATE LONDON SW1H 9AT

11 January 1990

*Mr Chris.*

*CS 12/1*

DOGS

*at Nat*

*MS*

Thank you for copying to me your letter of 7 December to the Lord President.

While I appreciate that there is some pressure from local authorities for the introduction of a dog registration scheme to finance dog control measures, I have strong reservations. I would endorse the point made by Nicholas Ridley in his letter of 13 December questioning the need to introduce new regulations and taxes on dog owners for which we the Government, not the local authorities, would be blamed. Also I cannot see how the "polluter pays" principle comes into the matter since a registration scheme would mean that all dog owners paid, whether or not their dogs polluted public areas. I also have doubts that a requirement to register would encourage a more responsible attitude to dog ownership. Surely the responsible will register and the irresponsible will not.

I note that you propose to consult local authorities and other interested bodies about the details of such schemes. However, before we concede the concept in principle, I consider that we need some estimate of the likely cost of a typical scheme and the registration fee, including whether local authorities are likely to wish to introduce exemptions for retirement pensioners. We have enough trouble with pleas for retirement pensioners to be exempt from the TV licence fee without courting new unpopularity over imposts on old people with dogs.

If, notwithstanding these objections, it is decided to go ahead with your proposals there are a number of points of detail which your officials will need to work out with mine, particularly in the area of enforcement.

I am copying this to the Prime Minister, Sir Geoffrey Howe, other members of H Committee, Tim Renton and to Sir Robin Butler.

*Government*

The Rt Hon Christopher Patten, MP  
 Department of the Environment

END AFFAIRS = Litter.  
A2







THE DEPARTMENT  
OF TRANSPORT

NBPM



CSA

FROM THE SECRETARY OF STATE

2 MARSHAM STREET LONDON SW1P 3EB  
TELEPHONE 01-276 3000

The Rt Hon Chris Patten MP  
Secretary of State for the Environment  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

My Ref:

Your Ref:

Dear Chris,

*See with Peter*

10 JAN 1990

LITTER

Thank you for your letter of 19 December. I have also seen the letter of 18 December from the Prime Minister's Private Secretary.

I am glad that you appreciate the special problems of applying a visual standard for motorways of the type envisaged in the draft Statutory Code of Practice. It will be important to strike the right balance between the need to keep motorways free of litter and the implications for road safety and traffic delays of motorway cleaning operations. I have therefore asked my officials to explore with yours how such a standard might be drafted and how it might be applied.

I am copying this letter to the Prime Minister, to other colleagues on 'H', the Lord Chancellor, the Attorney General and to Sir Robin Butler.

*Yours Ever  
Cecil*

CECIL PARKINSON

ENVU AFFAIRS: LITTS-

Pg 2







Prime Minister

Mr Clarke's letter reiterates your concerns about the introduction of local registration schemes.

CAS 9/11

The Rt Hon Chris Patten MP  
Secretary of State for the Environment  
2 Marshan Street  
LONDON  
SW1P 3EB

Richmond House  
79 Whitehall  
London SW1A 2NS  
Telephone 01 210 3000  
From the Secretary of  
State for Health

09 JAN 1990

Dear Chris,

DOGS

Thank you for copying to me your letter of 7 December to Geoffrey Howe. I am sorry that you did not receive a response by 13 December, but I do have very great doubts about your proposal to introduce a discretionary power for local authorities to bring in their own registration schemes for dogs including a power to charge a registration fee. I have no doubt that most local authorities would soon find the pressure to have such a scheme irresistible and we would, in effect, have a national arrangement. I have always felt that it could be very costly and the benefits claimed for registration are largely illusory.

I share your views about the present state of public opinion however. Many people have come to believe that such schemes would have dramatic beneficial effects on the pollution of streets and the attitudes of dog owners and it is not easy to persuade them otherwise. If colleagues feel the pressure is irresistible and the increased local government spending a necessary price, I would not wish to urge strongly that we should resist.

I am copying this letter to the Prime Minister, other members of H Committee, Tim Renton and Sir Robin Butler.

KENNETH CLARKE

EW Affair  
Litter Pt2







cc *[initials]*

NBPM

Ministry of Agriculture, Fisheries and Food  
Whitehall Place, London SW1A 2HH

**From the Minister**

The Rt Hon Christopher Patten MP  
Department of the Environment  
2 Marsham Street  
LONDON SW1

8 January 1990

*[Handwritten signature]*

DOGS

*see with CAS*

I have only just seen a copy of your letter to Geoffrey Howe of 7 December setting out your proposals on this subject. Many farmers of course own dogs. Commonly these are essential for the proper working of the farm. However, I see no reason for farm dogs being treated any differently from others and your proposals seem generally acceptable to me.

I am copying this to the Prime Minister, members of H Committee, Tim Renton and to Sir Robin Butler.

*[Handwritten signature]*  
JOHN GUMMER

ENI AFFAIRS : Letter PTZ





file

CAROLYN SINCLAIR

RECYCLING

The Prime Minister saw over Christmas your note on recycling. You mentioned that industry could contribute financially to sorting and baling centres from which recycling raw materials could be drawn. But you suggested that this might need some pump priming money from Government. I asked the Prime Minister whether she would like to pursue the idea of pump priming, but she said that she did not wish to do so.

MS

CAROLINE SLOCOCK

2 January 1990



10 DOWNING STREET

LONDON SW1A 2AA

*From the Private Secretary*

22 December 1989

*Dear Alan,*

UK 2000 RESTRUCTURING

The Prime Minister was grateful for your Secretary of State's note of 21 December about what he proposes to do on UK 2000. She is content for the restructuring to go ahead as he proposes.

I am copying this letter to Stephen Williams (Welsh Office), Clive Norris (Department of Employment), Uriel Jamieson (Scottish Office), Stephen Pope (Northern Ireland Office), Carys Evans (Chief Secretary's Office) and Robert Canniff (Chancellor of the Duchy of Lancaster's Office).

*Yours sincerely,*

*Caroline*

CAROLINE SLOCOCK

Alan Ring, Esq.  
Department of the Environment





Prime Minister ①

Are you content for  
the restructuring to go  
ahead?

PRIME MINISTER

UK 2000 RESTRUCTURING

Yes no

CS 21/12

Since you were closely involved in the launch of UK 2000 in 1986, when Richard Branson was its Chairman, I am writing to let you know the changes I propose to make to its management in England. These would take effect on 1 April 1990 at the end of the UK 2000's present funding.

UK 2000 was set up as a national environmental initiative for three years, since extended to four. It brings together (under a Central Unit of 21 staff) the six main voluntary organisations (VOs) concerned with environmental improvement to carry out high quality schemes, to secure business awareness and sponsorship and to provide training opportunities for the unemployed. The DOE grant in 1989-90 is £1.896m.

UK 2000 in its present form has outlived its usefulness. It has reached the end of its experimental life; demand for training has reduced with falling unemployment and changing demographic structure; the individual VOs are doing much good work on the ground with their UK 2000 funds; and the environment as an issue is now centre stage.

However, the future of UK 2000 needs careful handling. We need to avoid criticism that we are withdrawing from an environmental initiative which assists the unemployed and encourages volunteering.

I therefore propose to keep UK 2000 as a network, meeting once or twice a year under the same President and Chairman and with the same VO and territorial members. (Only the independent directors would stand down.) This would be serviced by a post in one of the VOs which my Department would fund. The VOs would get the funds they



MANAGEMENT IN CONFIDENCE



currently receive from UK 2000 (£1.1m this year) from my Department and would become directly accountable. They would also get their share of the project fund (£336k this year), and the remaining amount (50%) for other voluntary groups would be administered by one of the VOs. Business awareness and sponsorship activities would be taken forward by BITE, BiC's recently established Business in the Environment target team under the chairmanship of Tony Cleaver at IBM.

This would remove an unnecessary layer of bureaucracy, and would enable better use to be made of the funding which currently goes to the Central Unit (£478k this year). The VOs have agreed to make arrangements to take on the staff as supernumeraries for up to a year, although not all of them might be able (for family or financial reasons) to accept the offers. The Executive Director, Brian Lybery, would go to BiC on the same basis primarily to service BITE.

These proposals have the support of Richard Branson, (now President of UK 2000), Stephen O'Brien, the present Chairman and the six VOs who are all anxious to help with presentation and associated publicity. I also understand my proposals will not cause any problems to colleagues in Scotland, Wales and Northern Ireland. Their UK 2000 activities are organised somewhat differently, have been more successful and are on a much smaller scale (total territorial expenditure £537k this year).

UK 2000 still has a misleading anti-litter image, although its litter remit ended when the Tidy Britain Group (TBG) left it in April 1988. Since then Government funding for TBG has more than doubled to about £3m this year and our proposals in the Environmental Protection Bill further demonstrate our determination to tackle litter. My plans for UK 2000 will not therefore affect the Government's anti-litter commitment.



MANAGEMENT IN CONFIDENCE



I am concerned to present these changes positively and as soon as possible so as to avoid the danger of any leaks. Mr O'Brien has suggested that his Board should recommend to me that funding should not be continued in its present form. This is an ideal solution, as the move for change would come from the Board. I will therefore ask Mr O'Brien to call his emergency board meeting as soon as possible in January. I would respond to the Board with a positive press release, setting out my restructuring proposals. This would also welcome the changes, stressing that resources for this work will not reduce (they will in fact increase to £1.944m in 1990-91). I will clear the draft with colleagues.

I am copying this minute to Peter Walker, Norman Fowler, Malcolm Rifkind, Peter Brooke and Norman Lamont, and also to Kenneth Baker in view of his personal involvement in setting up UK 2000.

A handwritten signature in black ink, appearing to be "A. D. R.", written in a cursive style.

P.P. CP  
(approved by the Secretary of State  
and signed in his absence)

21 December 1989

CONFIDENTIAL



*Like to  
c: Street*

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

21 December 1989

**ENVIRONMENTAL PROTECTION BILL**

The Prime Minister has seen a copy of your letter to Paul Gray about the litter provisions of the Environmental Protection Bill. She is grateful for your Secretary of State's assurance that the removal of the definition of highway maintenance from the Bill will not affect the effective operation in practice of the duty to clear litter from roads.

I am sending copies of this letter to Diana Goldsworthy (Lord President's Office) and Kate Bush (Department of the Environment).

CAROLINE SLOCOCK

Peter McCarthy, Esq.,  
Department of Transport.

CONFIDENTIAL

*MS*



PRIME MINISTER

20 December 1989

Prime Minister ①  
Do you want me  
to pursue (X)  
overleaf. No  
mf  
CPS  
27/12

RECYCLING

International comparisons

I attach some diagrams at Annex A which show the current levels of recycling in the UK, together with European comparisons.

The first diagram shows that we still have a long way to go to meet our year 2000 target of 50%. We are best on paper (29%), and worst on plastic (0).

The country which is doing best on recycling is Switzerland, followed by the Netherlands and the FRG. The UK seems to be doing better than Norway, but the missing figures for the Nordic countries make valid comparisons difficult. The Irish and Italian figures for aluminium cans look fishy.

Interest at home

You may like to see the attached article on recycling from January's "Country Living" (Annex B). This concludes with a useful list of organisations which accept material for recycling. It also lists the bottle banks etc provided by the 5 major retailers. (Friends of the Earth have compiled a similar list).

Conclusion

There is a great deal of interest in recycling. People of all ages will participate enthusiastically provided:

- (a) there is a market for recycled material;

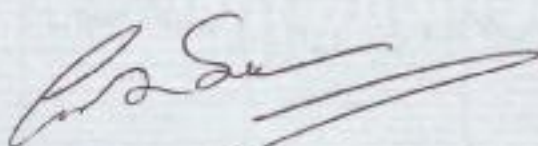
(b) its collection and disposal does not become too much of a chore (relatively few people would go to the lengths described in "Country Living" - which is just as well given the petrol used).

Companies of all kinds can help with (a). Although there is currently a glut of collected newspapers, new paper mills opening shortly in Shotton, Gartcosh in Scotland and Aylestone in Kent will boost demand for paper for recycling.

Alcan are opening a new plant in Warrington in 1990 to recycle aluminium cans. It will be important to stress to industries of all kinds that they can and should be saving/making money through waste minimization and recycling.

(X) Industry could contribute financially to sorting and baling centres from which recycling raw materials could be drawn. This might require some pump priming money from Government to get the idea off the ground.

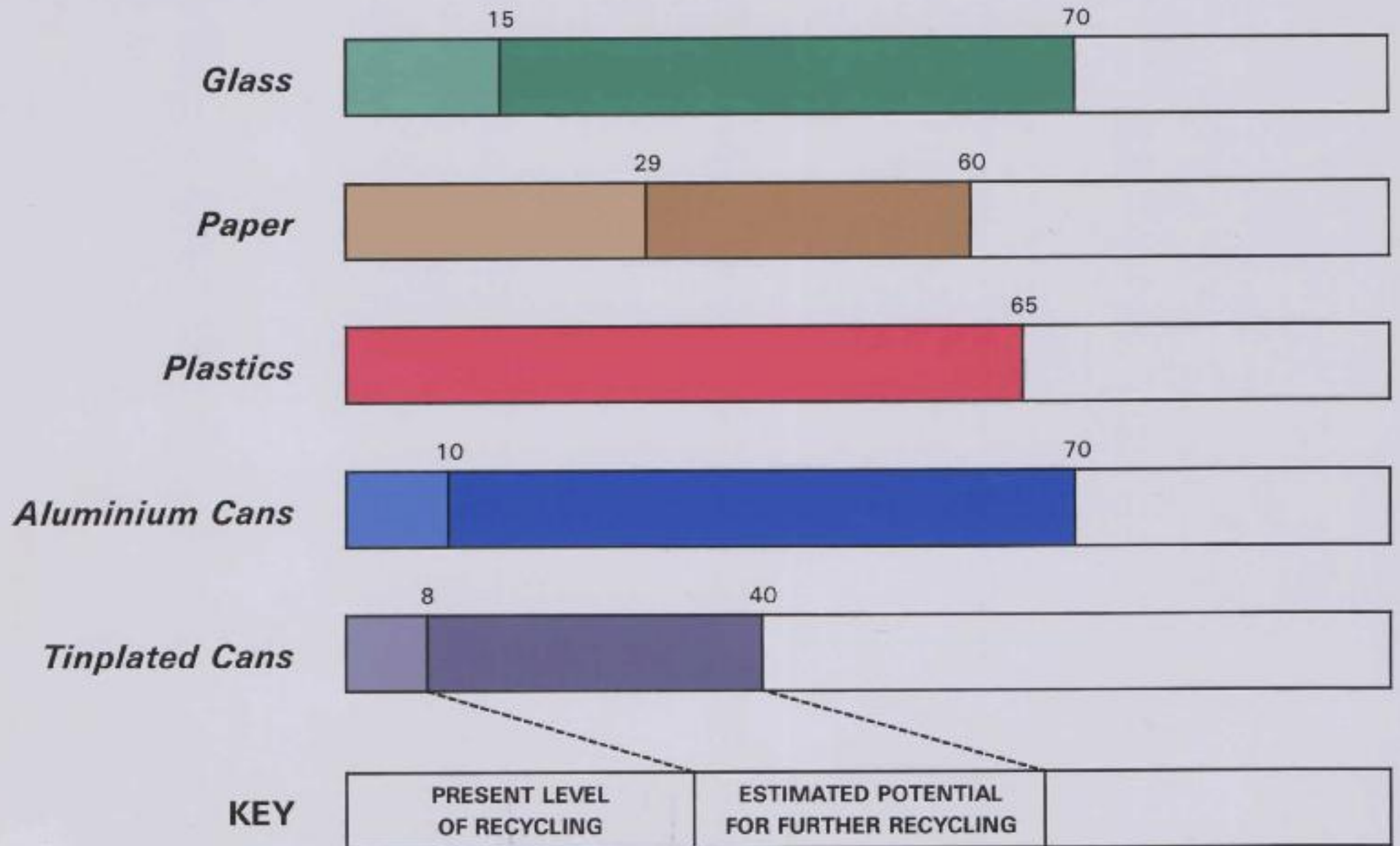
The big retailers and the local authorities are best placed to help with (b) - convenient collection and disposal points.



CAROLYN SINCLAIR



# Post-Consumer Recycling in Great Britain (%)

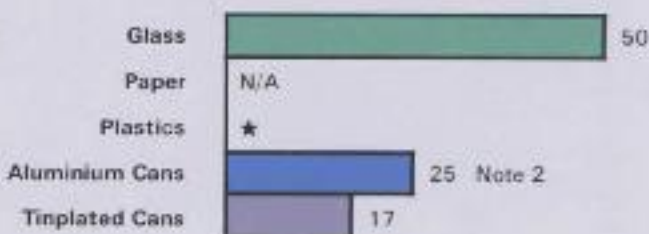


## European Post-Consumer Recycling Performance (%)

### AUSTRIA



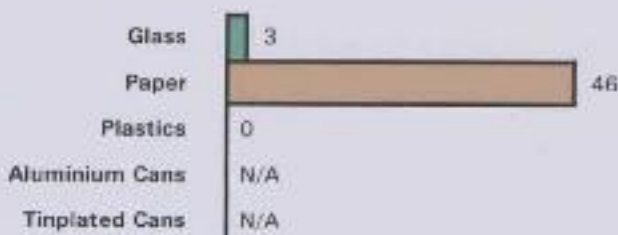
### BELGIUM



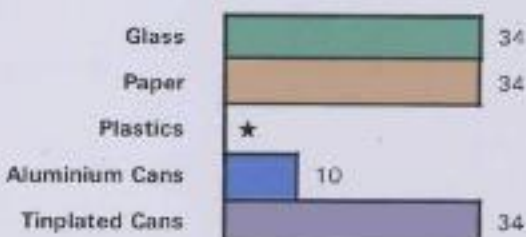
### DENMARK



### FINLAND



### FRANCE

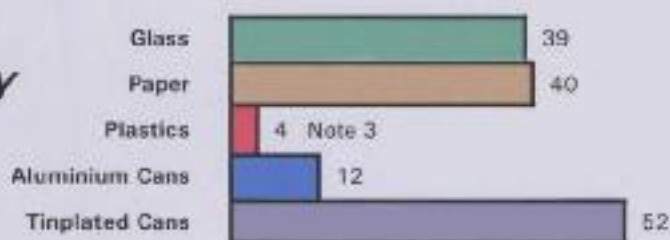


★ = Minimal      N/A = Data not available

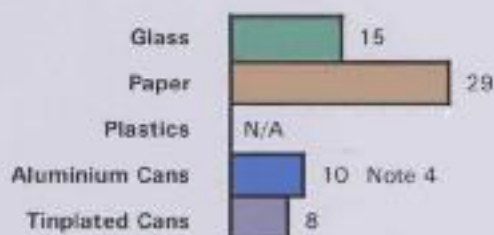


## European Post-Consumer Recycling Performance (%)

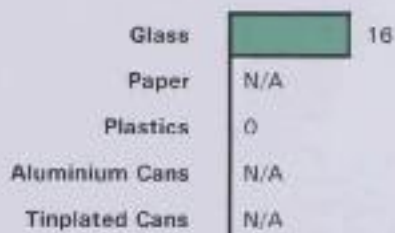
### WEST GERMANY



### GREAT BRITAIN



### GREECE



### IRELAND



### ITALY



★ = Minimal      N/A = Data not available

## European Post-Consumer Recycling Performance (%)



★ = Minimal      N/A = Data not available



## European Post-Consumer Recycling Performance (%)



★ = Minimal      N/A = Data not available

- NOTES**
- 1 Greater Vienna only.
  - 2 Only total figures for Benelux countries are available.
  - 3 Estimate - collection schemes only cover 5-6% of the population.
  - 4 1989 target.
  - 5 Only combined figures for Spain and Portugal are available.
  - 6 Only in those authorities (about 8%) where recovery takes place.

The figures given are not in all cases strictly comparable between countries; they are based on the most recent available information, which is 1988 in the case of glass but varies between 1984 and 1989 for other materials and the basis for calculating them is not standardised.

# SHOP, SKIP *and* DUMP

TODAY'S FISH-AND-CHIP PAPER  
COULD BE TOMORROW'S  
NEWSPAPER, IF ONLY  
RECYCLING WERE EASIER. WE  
ASKED MADELEINE KINGSLEY  
AND ELISABETH DUNN, AT  
DIFFERENT ENDS OF THE  
COUNTRY, TO TRY DISPOSING OF  
THEIR HOUSEHOLD WASTE IN  
THE SOUNDEST WAY POSSIBLE



The true confession of this Nidderdale country housewife is that I have, heretofore, been recycling blind. Every egg-shell, uneaten rice grain and moribund rose has dropped into the yawning maw of the council's black bag along with papers, cans and plastic. Every Monday morning the bin men hump away four of our polythene sacks to our neighbour's one. Our only illogical concession to the waste-not principle was tying up the neck of the said bags with baling twine cut from used hay bales. And even that was prompted not by green gusto but plain old-fashioned thrift passed down from my mother via Her Majesty, whose wartime childhood made her famous for squirrelling away little bits of string. My sole excuse for so far failing to reduce the national rubbish tip is that recent emerald energies have gone into working hard to trade up my car for an unleaded fuel model. Without benefit of motor, and the telephone, no refuse revolution could ever have taken place here: it took some 10 calls to conclude that our immediate rural area takes recycling to mean

pedalling backwards down our famously hills. The nearest bottle bank is eight away in Ripon, which we visit only once six weeks when our daughter's ortho hardware needs rewiring. Harrogate, 10 away, has a dismal recycling record and main banks are the wrong side of town: opposite the Yorkshire Show Ground, we visit only once a year. Thank heaven for Leeds, where the school takes me daily, even though it's a hefty miles away. Leeds is green as grass, or green that way with 120,000 of its 700,000 citizens involved in some recycling and where Leeds City Council Environmental Health Department told me, Sainsbury's supermarket site is graced with bottle, can and paper tips. In 18 months of shopping there I had noticed them. Public awareness, I dare say, is nine-tenths of the recycling effort: I found out where to go, the rest is relatively easy. True, I was initially irritated by having to use my brain as a sorting office at point of refuse disposal: glass in one bag, washed catfood cans in another and organic



in a third, to be walked down the lane to a friend's compost heap.

But conversion zeal quickly set in along with searching questions. Do chicken bones, albeit organic, go on the compost, where they might encourage foxes or choke a dearly-beloved pet? Why don't we have battery banks for the recycling as they do in Sweden? Why was the elderly gent with the golf club fishing in the clear glass bottle bank with the urgency of one beating the clock at the London Palladium? Answer: seeking coffee-jar labels for an on-going special offer.

Recycling projects plainly spawn their own peculiar subcultures and inspire a new series of fascinations. How fortunate, I found myself thinking, that egg boxes have become biodegradable now that my children are no longer of an age to Blue Peterise them into creative artwork. How sad that small boys no longer go newting and shrimping, so naturally prolonging the active life of jam jars. How much more rewarding it proved to drop a pile of old glossies down to the surgery waiting room (to ooohs of appreciation) rather than forcing them into the too-small slot of the paper bank which threatened to digest my rings along with the newspaper. And how virtuous it felt to save 85p (donated to Greenpeace) by having my empty "smellies" bottles refilled at The Body Shop instead of buying new.

I discovered that, contrary to supposition, the can bank smelt only mildly – of metal rather than Chum gone off – but that the whole recycling site was sadly and unexpectedly unsavoury because, despite large "Please Don't" notices, tatty waste paper and cardboard boxes had been dumped alongside the banks. And someone's misplaced clothes jumble was overflowing its carrier bags on to the pavement. (In its forthcoming Green Bill, which will introduce recycling guidelines for local authorities, the Government plans to include a provision for people to apply to the Magistrates' Court for a "litter abatement order" against their local authority if it neglects its duty to keep land clean.)

I'd always presumed it ecologically sounder to stock the children's packed lunches with small fruit-juice cartons than with the more healthy



*Madeleine Kingsley wrestling with the rubbish in and around Leeds where 2,500 tonnes of waste paper and 64 tonnes of cans were collected for recycling last year*

of canned drinks, but it seems the reverse is true: Garforth, Leeds firm, "Just Rewardz", is supplying local city schools with collecting bins for aluminium cans and meals container foil which it then collects at 40p per kilo. Conservation consciousness is fostered by giving every pupil a magnet to test the can content (some are steel) before buying. Seventy Leeds schools are already taking part and the firm would be happy to collect supplies from outlying rural schools within a reasonable radius and given sufficient quantity. It's a start – and a

necessary one if you consider that 85 per cent of aluminium cans are already recycled in Sweden and 55 per cent in the US, while we chalk up a miserable five per cent.

At least that figure includes one lone, local 13-year-old schoolboy and scout, Miles Thomas, who's just set himself up as a local aluminium can agent. This last week he has, by bicycle, been dispensing collecting bags, magnets and leaflets in fish-and-chip shops and garages. How was he turned on to the scheme? Not by our own Aluminium Can Recycling Association who operate out of Birmingham and who've provided his supplies, but by a keen conservationist friend visiting all the way from Arizona. If most of us don't consider, let alone act on aluminium, it's because, quite simply we're still oblivious that £20m worth of drinks cans are thrown away each year even though it takes 95 per cent less energy to remelt used cans than to make them anew. If only they did know, wouldn't most PTAs and WIs be glad of this small and public-spirited fundraiser?

Now that I do know, I'm sad that we are light years behind Toronto, where Blue Boxes are provided for every household to fill with recyclables at point of refuse, and then taken away with the rest of the rubbish. This seems to me to be the ideal, if ambitious, rural solution. The double bind though is that it is useless to boost the recycling supply if demand can't match it.

It dawns upon me that I won't be doing my bit for rubbish reduction by banking my newspapers unless I then buy recycled stationery. Nor, indeed, unless I stop accruing paper and plastic bags at the rate shops press them upon us all. So black marks to Boots, who forced a bag on me, denying that the receipt alone would satisfy the store detective; and to Marks & Spencer, whose checkout lady informed me that I had to take a bag for my aluminium wine can "because of under-age alcohol sales". Madam, I am 43! But there again, black marks sullied my white shirt front after I had nobly refused a bag for the papers at WH Smith. It strikes me that there is, as yet, no easy way to recycle and win. But I felt it was somehow good for the soul as well as the country to play the garbage game. MK →





*The recycling round in Dorset took Elisabeth Duna nearly two hours—and that's not including the preparatory wash and squash routine*

Mrs Tidy Britain is a dedicated and exhausted creature. To get rid of the household rubbish in a responsible and grown-up way so that every piece of recyclable detritus is directed to the appropriate recycler, demands a certain tenacity of spirit, well-developed organisational skills and limitless energy. Mrs Tidy Britain may look back with some nostalgia to the days when she put out the bin on a Tuesday and didn't give it another thought—but nothing can compare with the glow of moral righteousness bestowed by earth-friendly waste-disposal.

It is probably easier to achieve the glow here in West Dorset than in urban Britain. Bridport is the charity-shop capital of the world, where no unwanted garment or redundant artefact of domestic life cannot be found a home. But there remains the ever-increasing weekly flow of newspapers, magazines, junk mail, cans, foil, bottles, boxes, plastic and vegetable peelings—all the outer skins of society's consumables which add up to a tonne per family per year and which, unless pre-empted, West Dorset District Council dumps on a majestic fold of the coastal hills.

First, I set about disposing of our forests of newsprint. A kindly lady at the awesomely remote-sounding Higher Yonderover Farm collects newspaper to sell in aid of the Girl Guides and welcomes contributions provided the magazines are tied in separate bundles. I collected together the week's bottles for the Bridport bottle bank and the tins for the Save-a-Can skip. This is the least attractive part of the process. Wash and Squash is the masey advice on the can skip. Washing and squashing a disused tin of Pedigree Chum is one notch down on the aesthetic scale after cleaning the hair out of the bath plughole. I finally loaded everything into the car.

Working from home, I tend to amass a rich underbrush of bits of paper which do not qualify for the Girl Guides fund-raising effort and which, if burned, would no doubt substantially increase the size of the hole in the ozone layer over Beaminster. But a helpful recycler at Dorset Waste Paper said he would take them if I removed any plastic envelopes and

delivered them. He would also take cardboard boxes.

In the event, this is generous of him. When I reached the depot in Dorchester, a Manhattan of compressed garbage, he asked me to be discreet about where I leave my tiny contribution or the Council might get stroppy about it. "If you asked the Council what to do with your old paper," he said, "they'd tell you to take it down to the tip. They don't like us because there's litter on the road. The sweeper comes down here three times a day but they'll sweep it only twice a year. Don't ask me why. I reckon we save the Council £50,000 a year."

I looked with distaste at the onion skins, potato peelings and assorted culinary overspill. "Any food leftovers can be turned into compost" an advisory leaflet said. This is contrary to my experience. Food leftovers do not turn into compost; they turn into a black, odoriferous slime enlivened by the occasional cabbage stalk. Serious gardeners advise that a compost heap is not a dump; it is a painstaking composition of wet straw and grass cuttings. Weary but well-meaning, I opted for responsible disposal rather than horticultural wisdom and plodded up the garden with a bucket of mess. While there, I dug a small pit for the contents of the chip pan which would provoke catastrophe in the septic tank if poured down the drain. I added the ash from the fireplace.

All that remained was the plastic—the washing-up liquid, bleach and shampoo bottles. I could reduce their number by buying refillable bottles from The Body Shop, but disadvantaged by not living in Manchester or Sheffield, I can do little other than put out the plastic for the dustman. I rang the local Waitrose to ask whether they might start a recycling scheme, got referred to headquarters in Bracknell, thence to John Lewis in London and thence to the British Plastics Federation which was sorry I didn't live in Sheffield or Manchester or shop at Tesco in Colney Hatch where recycling schemes thrive.

I made the round trip taking in Higher Yonderover, Bridport and the waste-paper Dorchester dealer—just short of 35 miles, all told. Tired but glowing, I reflected that if the planet needs energy, it's got to come from somewhere but I'm not sure if I've enough to go round.

Morally speaking, it is worth it. All that the dustman reaps from our house now is a bulging but feather-like bag of spent margarine tubs, Flash bottles, the infuriating plastic wrappers from junk-mail and the odd shoe. The question remains that if I can do it for my household, why can't the Council do it for everybody? Especially as it does actually make money (a) for Dorset Waste Paper and (b) for local charities who receive the proceeds of the can bank. West Dorset District Council sends two dustcarts to our village every week—one for the main roads, one for the lanes. It should surely not be beyond its imagination to collect the rubbish separately so that we can be green and pleasant and awake. ED ✻→



## WASTE TIPS

There are three solutions to the problems of resource depletion and damage to the environment:

- using alternatives or substitutes (for example, wind or solar power rather than fossil fuels)
- reducing consumption by making existing resources last longer
- recycling or reusing the resources we already have. Denmark, Germany, Holland and Switzerland recycle about 50 per cent of their glass containers; we recycle 16 per cent. Canadians recycle 65 per cent of their aluminium cans; we manage a feeble five per cent. Though we can work towards using alternatives and reducing consumption, these have to be gradual processes, but we can practise recycling and reusing immediately. These organisations will advise on how to do it:

**Aluminium Can Recycling Association** Suite 308, I-mex House, 52 Blucher Street, Birmingham B1 1QU (Freefone 0800-626905). Supplies information pack of posters, leaflet and details of more than 200 recycling centres for aluminium cans.

**British Glass** Northumberland Road, Sheffield S10 2UA (0742-686201). Trade association that provides a list of bottle banks in town or country.

**British Paper and Board Industry Federation** Papermakers House, Rivenhall Road, Westlea, Swindon SN5 7BE (0793-886086). Trade organisation representing papermills that recycle paper; will put people in touch with nearest mill.

**British Plastics Federation** 5 Belgrave Square, London SW1X 8PD (01-235 9483). Trade organisation that will give address of nearest place to take plastic rubbish for recycling.

**British Scrap Federation** 16 High Street, Brampton, Huntingdon PE18 8TU (0480-455249). Trade organisation giving information on ferrous metal recycling, ie its importance and the processes used. However, it cannot supply addresses of local dealers.

**British Secondary Metals Association** Park House, 25 Park Road, Runcorn, Cheshire WA7 4SS (09285-72400). Trade organisation giving information on non-ferrous metal recycling. Members might accept small quantities but generally deal in bulk, not in household waste.

**Can Makers Information Service** (Sylvia Robinson), Elm House, 19 Elmshott Lane, Crippenham, Slough, Berks



SL1 5QS (06286-66658). Save-a-can scheme run for recycling all kinds of cans in all metals. Has 197 skips in 61 boroughs.

**Conservation Trust** George Palmer Site, Northumberland Avenue, Reading RG2 7PW (0734-868442). Educational charity to supply information on recycling policy (ie arguments for it); few local details as yet.

**Friends of the Earth** 26-28 Underwood Street, London N1 7QJ (01-490 1555). Recycle It campaign has compiled guides to local recycling facilities, area by area. Guides available from January 1990 through local FoE groups. The Daily Telegraph and WH Smith branches.

**Reclamation Association** (see BSF above). Recycling of textiles (eg old clothes), paper; can give nearest member to take materials to.

**Tidy Britain Group** The Pier, Wigan WN3 4EX (0942-824620). Litter prevention and recycling. Details of 10 regional offices on request, with information on how to organise local clean-up groups.

**UK 2000** Butlers Wharf Business Centre, Unit 101, 45 Curlew Street, London SE1 2ND (01-378 1847). National environment campaign whose aims include recycling paper, textiles, glass etc. Linked with FoE recycling unit, and involved with Sheffield Recycling City project.

**United Kingdom Reclamation Council** (see BSF above). Body overseeing recycling organisations; can provide addresses of members and general information.

**Waste Watch NCVO** 26 Bedford Square, London WC1B 3HU (01-636 4066). National recycling agency offering advice and information on recycling domestic waste.

## CHECK OUT THE SUPERMARKETS

We asked five major supermarket chains about the recycling opportunities they offer their customers:

**Asda** 131 branches nationwide. Banks: 73 bottle; 22 paper; 10 can; 3 plastic. Only two branches have all four; these are both in Sheffield which is currently designated Recycling City.

**Gateway** 800 branches nationwide. Banks: 190 bottle; some can. Not all the bottle banks counted were actually installed and run by Gateway. The company actively encourages managers to get together with local organisations, so this swells the bottle banks and makes the number of can banks hard to estimate.

**Safeway** 263 branches nationwide. Banks: 75 bottle.

**Sainsbury** 286 branches nationwide. Banks: 50 bottle; 6 paper; 6 can. Only the stores in Leeds and Selly Oak (Birmingham) have all three.

**Tesco** 380 branches nationwide. Banks: 103 bottle; 50 paper. Pilot schemes for PET plastic bottles, aluminium can banks in four stores. The store at Colney Hatch in north London has banks for PET plastic bottles, steel cans and glass bottles. Tesco is to be linked with the new plastic recycling plant that European Vinyls Corporation will be building in Manchester.

To rid yourself of the daily avalanche of junk mail, take your name off their lists by contacting the Mailing Preference Service on 01-730 0844.

Judging by your frequent requests for back issues of *Country Living*, it's obvious that not many copies are thrown away. But if you do need to get rid of a few, the most ecologically sound way is to swap them with your friends, give them to your local hospital, doctor, dentist, school or day centre, or take them to be recycled. You can find your nearest centre by consulting the new *Telegraph/Friends of the Earth* county-by-county directory. ♻️





*Prime Minister<sup>2</sup>*  
*This crossed in the post with your response — but is in line with it.*

*ccph*

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

The Rt Hon Cecil Parkinson MP  
Secretary of State  
Department of Transport  
2 Marsham Street  
LONDON  
SW1P 3EB

*CAS*  
*19/12*

My ref:  
Your ref:

*19* December 1989

*Dear Secretary of State*

LITTER

*Re: with CAS*

Thank you for your letter of ~~12~~ December.

I very much welcome your proposal that motorways should after all come within the ambit of the proposed Crown duty on litter. I agree that motorways present distinctive problems as far as cleaning is concerned and that these can be distinguished from those of other transport operators (notably British Rail and LRT) where the traffic movement is controlled by the operator and where there is a regular and substantial fall in the level of traffic at night. I also agree that the Code of Practice will have to treat motorways as a class of their own. Nonetheless, I fear that I cannot accept your proposal that motorways should be treated entirely differently in substance, imposing a duty, as you suggest, related only to the frequency of cleaning rather than the end result.

The key to the success of our litter proposals rests I believe in the fact that we are proposing through the Code of Practice to set standards of performance which the public can judge by looking at the end result. The public is not concerned about whether a particular street is swept once, twice or ten times a week, but whether that street is in general acceptably free of litter and refuse. If they think that it isn't, then they will be able to look at the standards set out in our Code of Practice and use the Code in evidence in taking the authority or body concerned to court. But a standard based on frequency of cleaning is not transparent in the same way and would, I fear, be seen by the public as a major hole in the application of the litter duty to the Crown.

Having said that, I believe that the effect of your proposal could be achieved almost as well by modifying the visual standard in the Code for the case of motorways. We are agreed that what we are aiming at is a significant improvement overall in the standards of litter and refuse clearing. Given that joint aim, and the experience of your Department in the relationship of cleaning







frequencies to the end result on particular kinds of motorway, I am sure that it will be possible to develop visual and time standards which meet our joint objectives. The Code will in any event embody the idea that an area might be allowed to lapse from the preferred standard for a maximum prescribed time period. The prescribed item for an area will vary according to such factors as visual prominence, safety considerations and ease of access for cleaning (for example to busy shopping streets during shop opening hours) and similar provision could be made for motorways in drafting the Code. If you agree, I suggest that our officials discuss as soon as possible how to develop the Code on these lines.

I am copying this letter to the recipients of yours.

*Yours sincerely,*

*R Bright*

CHRIS PATTEN

*or*

*(approved by the Secretary of State and signed in his absence)*





*cap. U*

*NEAM*

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

My ref:  
Your ref:

The Rt Hon Sir Geoffrey Howe QC MP  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1A 2AT

19 December 1989

*Dear Lord President,*

**ENVIRONMENTAL PROTECTION BILL**

Thank you for your letter of 13 December in reply to mine of 28 November.

You asked me to let you know more precisely the anticipated timing of the proposed hazardous substances amendments, and the stage at which we propose to announce our intentions.

My suggestion was that we should table these amendments when the Hazardous Substances Consolidation Bill has reached second reading stage in the second house, so that we can avoid reference to the Town and Country Planning Act. I understand that it is intended to introduce this Consolidation Bill in early February and that, assuming there are no unforeseen problems, we would expect it to reach second reading in the second house by about the first week in April. As our present timetable for the Environmental Protection Bill envisages that that Bill will be introduced into the House of Lords at the end of March, it is likely that we should table the hazardous substances amendments at Lords Committee stage.

In these circumstances, I think it would be prudent not to announce our intentions on these amendments until we can be more certain that the linkage with the passage of the Hazardous Substances Bill is going to work.

I am copying this letter to the Prime Minister, members of MISC 141, John Belstead, Tom King, Bertie Denham and to Sir Robin Butler and First Parliamentary Counsel.

*Yours sincerely*  
*A D L*

PP CHRIS PATTEN  
(approved by the Secretary of State and signed in his absence)







Gav A11 - better Pro

CONFIDENTIAL



THE DEPARTMENT OF TRANSPORT



cc: PM

FROM THE SECRETARY OF STATE

2 MARSHAM STREET LONDON SW1P 3EB  
TELEPHONE 01-276 3000

Paul Gray Esq  
Private Secretary  
10 Downing Street  
LONDON  
SW1A 2AA

Prime Minister

My Ref:

Your Ref:

*This is a little hard to follow but it seems to be the assurance you were seeking. It looks as if the removal of the definition of highway maintenance is only a technical change and will not affect the effective operation of the duty in practice. Content?*

178 DEC 1989

CS 20/12

Yes not Kap

Dear Paul,

**ENVIRONMENTAL PROTECTION BILL**

My Secretary of State has seen your letter of 11 December conveying the Prime Minister's comments on street cleaning and the control of dogs.

He is pleased to confirm that the Bill will rationalise litter clearing and street cleaning responsibilities in the way previously agreed. Removing from the Bill the provision that would have enabled highway maintenance to be defined, as distinct from street cleaning, does not jeopardise the new provisions that place responsibility squarely on either district or borough councils. These authorities will have a statutory duty to keep roads clean and free of litter that parallels exactly the duty that will apply to other land in local authority ownership or control.

*Yours ever,*

*Peter McCarthy*

P. McCARTHY  
Private Secretary

CONFIDENTIAL



Enw. Aff. winter P 22





MRM  
ccu

10 DOWNING STREET

LONDON SW1A 2AA

*From the Private Secretary*

18 December 1989

Dear Kate,

**LITTER**

The Prime Minister has seen a copy of your Secretary of State's letter of 12 December to the Lord President. She has also seen the Secretary of State for Transport's letter of 12 December to Mr. Patten.

The Prime Minister notes what is now proposed on Crown immunity and commercial frontages. On fixed penalty notices, she notes that the Home Secretary does not consider it appropriate for the police to enforce them. However, she wishes to reserve her position on the method of enforcement until it is clear what "non statutory" help the police can give. She understands from Mr. Patten's letter that his officials will be in contact with the Home Office to discuss how they can support the local authority effort on this front. She also considers that there may be grounds for applying fixed penalty powers for littering on motorways. Clearly only the police would be in a position to enforce these notices.

The Prime Minister welcomes Mr. Parkinson's willingness to remove Crown immunity in respect of litter clearance from motorways. She notes his advice that a balance must be struck between keeping roads tidy and traffic moving. However, she has commented that visual standards are essential. Visual standards will be the test against which the Government, as well as local authorities, will be judged; and prescribed frequencies for clearing litter do not seem to have worked well under the present motorway maintenance arrangements. She recognises that the new Code of Practice will have to take proper account of traffic management and safety considerations. But she suggests that the Code should be based on visual standards, but in language which would give the Department a defence on traffic management or safety grounds against litter complaints in legitimate circumstances.



I am copying this letter to the Private Secretaries to members of 'H', Paul Stockton (Lord Chancellor's Office), Juliet Wheldon (Attorney General's Office), Mrs. Powell (Solicitor General's Office) and to Sonia Phippard (Cabinet Office).

Yours sincerely,

Carrie

CAROLINE SLOCOCK

Miss Kate Bush,  
Department of the Environment

①  
PRIME MINISTER

LITTER

I attach two further letters on litter:

(i) at Flag A, a letter from Mr Patten setting out how he now intends to proceed, in the light of colleagues' comments:

- further discussion in H of how to remove Crown immunity. The main problem is to ensure consistency between Bills, particularly the Food Bill. On coverage, Mr Patten agrees that the duty on the Crown should apply to open spaces only; and that it should be placed on Universities and Polytechnics. John Mills agrees this is the right approach;

- a simpler but - John Mills assures me - effective solution to commercial frontages, having taken Counsel's advice;

- enforcement of spot-fines. Mr Patten agrees to look at a higher level of fine, as suggested by Mr Rifkind (who wanted it set at £16, the same level as for traffic offences). The Home Secretary has said that he does not think that the police should enforce these fines. Mr Patten therefore suggests that his officials explore other ways in which the police might help; and look at the experience of Westminster in their model scheme.

John Mills suggests that you should continue to reserve your position on the method of enforcement for fixed penalty notices, as a final decision on the role of the police ought to depend on what "non-statutory" help they can give. He suggests you might also comment that there may also be grounds for fixed penalty powers for littering on motorways, where there would be no prospect of local authority enforcement.



(ii) at Flag B, a letter from Mr Parkinson about litter on motorways:

- this agrees that crown immunity for litter offences should be removed from the Government in respect of motorways;
- but only if the duty to clear litter is expressed in terms of frequency of cleaning rather than in visual standards (because of the special circumstances of motorways).

John Mills' very clear note on this letter at Flag C points out that this is unlikely to be effective. It would simply express in statute the position now - which so evidently does not work. Instead he proposes that the new supporting Code of Practice for Motorways should be based on visual standards, but in language which would give the Government a defence on traffic management or safety grounds against litter complaints, in legitimate circumstances.

Content to comment as John Mills proposes on:

- enforcement of litter fixed penalty notices and the possibility of extending these to motorways? *Yes*
- on the new duty to be placed on the Government for clearing litter on motorways? *Yes*

*CS*

Caroline Slocock  
15 December 1989

14 December 1989

File

LITTER

Chris Patten's further letter of ~~12~~ December. This covers three subjects.

CROWN IMMUNITY

No action is needed on this. The Prime Minister's position is fully reflected in the current state of proposals. His meeting on 20 December, will I hope settle any wider legal and policy questions on Crown immunity as they apply to this subject and others.

COMMERCIAL FRONTAGERS

Counsel has now advised that a litter abatement notice need not only be to deal with a "one-off" situation, but may also require a commercial frontager to ensure a litter problem, once solved, does not recur. This means that fast-food outlets etc can be covered adequately under the single proposal for local authorities to be able to issue abatement notices to frontagers. This is a satisfactory, and simpler way forward. The Prime Minister can readily agree to this.

ENFORCEMENT

- (i) **Fixed penalty levels:** it seems eminently sensible to pitch these at the same level as for traffic offences, and I recommend the Prime Minister agrees with this.
  
- (ii) **The role of the Police:** Chris Patten accepts the Home Secretary's view that the Police should not have power to issue fixed penalty notices.



The Prime Minister, however, has not given a final view on this, but has merely noted the Home Secretary's doubts (your letter of 21 November). Thus you should signal that debate on this is not closed, and that the Prime Minister's final view depends on how satisfactory an outcome there is to the discussions among officials about other ways the police may be able to help. It is very important to ensure that the police are not let entirely off the hook.

One particular point worth exploring is to give the police a fixed penalty power in respect of litter thrown from cars on motorways/trunk roads. There is no-one else who could ever enforce the rules in that kind of situation.

#### Recommendation

The Prime Minister should

- on commercial frontagers, note Counsel's helpful advice on the possible scope of litter abatement notices and agree Chris Patten's way forward of a single proposal for authorities to have power to issue notices to commercial frontagers;
- on enforcement, agree that the fixed penalty should be set at the same level as for traffic offences;
- also on enforcement, not yet concede that the Police should have no power at all to issue fixed penalty notices. A final decision on this must depend on what "non-statutory" help from the police can be

offered. Suggest that, at the very least, there may be grounds for fixed penalty powers for littering on motorways, where there will be no prospect of local authority enforcement.

*John Mills*  
JOHN MILLS



LITTER ON MOTORWAYS

Cecil Parkinson's letter of 12 December.

He has retreated from his original position, which was no duty at all on his Department to clear litter from motorways for traffic management reasons. He now says a duty would be all right provided the Code of Practice, to which those under the duty will have to have regard, has a separate section on motorways. This would set standards based on prescribed cleaning frequencies, not visual standards (which will be the basis of everyone else's duty).

This must be resisted. Visual standards are essential.

First, prescribed frequencies are exactly what the existing arrangements are, and they have not proved satisfactory. Under these, county councils clean motorways as part of their wider highway maintenance function on behalf of the Department. (The prescribed frequency is 'normally once a year' plus extra sweeps if the Department thinks it necessary).

Even if the frequencies were doubled or trebled there is no reason to suppose it would solve the problem because it creates no incentive to respond to immediate needs. Only a visual standard can do this.

Second, visual standards enable resources to be concentrated on black spots. There's no point sweeping 50 miles if the immediate problem is 5 miles only needing much more frequent attention.

Third, the Government would look very feeble if it excluded visual standards from the major 'public' areas for which it is directly responsible. It would be no answer to complaints to say that this or that bit of motorway was due to be swept next month.

But of course the particular problems of litter collection on motorways must be recognised. This was fully accepted in your letter of 21 November. This can surely be done by appropriate language in the Code of Practice so that, in legitimate circumstances, the Department of Transport would have a defence (but not an absolute defence) on traffic management grounds against litter complaints.

What matters is that "traffic management" does not become an all-purpose excuse for inactivity. In some areas this is evidently the situation now. Nothing much will change unless the Department is kept on its toes by a visual standards test.

#### Recommendation

The Prime Minister should

- welcome Cecil Parkinson's now being prepared to drop his earlier insistence on Crown immunity for motorways;
- accept that the new Code of Practice will have to take proper account of traffic management and safety considerations in respect of motorways;
- but express concern about basing the motorway part of the Code on prescribed cleaning frequencies rather



than visual standards. Visual standards will be the test against which the Government, as well as local authorities, will be judged; while prescribed frequencies clearly do not seem to have worked well under the present motorway maintenance arrangements.

- suggest therefore that the Code in respect of motorways is based on visual standards, but with language which would give the Department, in legitimate circumstances, a defence on traffic management or safety grounds against litter complaints.

*John Mills*

JOHN MILLS

# dti

the department for Enterprise

*cc P*

The Rt. Hon. Nicholas Ridley MP  
Secretary of State for Trade and Industry

The Rt Hon Chris Patten MP  
Secretary of State for the  
Environment  
2 Marsham Street  
London SW1P 3EB

13/12  
Prime Minister<sup>2</sup>

*cds*  
13/12

Department of  
Trade and Industry

1-19 Victoria Street  
London SW1H 0ET

Enquiries  
01-215 5000

Telex 8811074/5 DTHQ G  
Fax 01-222 2629

Direct line 01 215 5621  
Our ref JW3AFX  
Your ref  
Date 13 December 1989

*mt*

*Dear Secretary of State,*

**DOGS**

Your letter of 7 December proposes a discretionary power for local authorities to introduce local dog registration schemes.

I have to say that I am strongly opposed to this. The Government is committed to imposing new regulations on individuals only where there are the strongest reasons for fresh incursions on their liberty. We successfully defeated pressure for a dog registration scheme last summer. As I said in my letter, from your desk, of 8 June, a registration scheme, whether national or local, is not the answer to any of the problems raised by dog ownership - attacks by dangerous animals, stray dogs and dog fouling. Not only would a scheme be ineffective, it would be likely to cost more to administer than it could collect in fees, and on past experience those who pay will not be those who cause the problem.

I am glad to know that you continue to reject the case for a national registration scheme. But that being so, I see no reason to abdicate our responsibility for saying so by leaving the way open for piecemeal and inconsistent registration schemes created by local authorities. The cross border problems would indeed be very complex.

I am sending a copy of this letter to the Prime Minister, Geoffrey Howe, other members of H Committee, Tim Renton and to Sir Robin Butler.

*Yours sincerely*

*N.R. 13*

*(approved by the Secretary of State  
and signed in his absence)*



Recycled Paper





NBPM

CCP/4

PRIVY COUNCIL OFFICE  
WHITEHALL, LONDON SW1A 2AT

13 December 1989

*In this*

*gap.*

Thank you for your letter of 28 November about your proposals for limiting the scope of your Environmental Protection Bill.

I was pleased to note that the Department of Transport have agreed to tailor the highways aspects of the litter proposals to avoid bringing highways maintenance issues within the scope of the Bill. I hope that Cecil Parkinson can, as the Prime Minister has requested, confirm that he is content that the revised proposals will work effectively (her private secretary's letter of 11 December refers). It would be helpful to have his confirmation before L Committee considers the Bill on 19 December.

I also welcome your proposal to trim the range of grant giving powers to matters within the general meaning of "environment" in the Bill. There is a risk, of course, that we will face criticism from the Select Committee on the Environment for limiting the provisions in this way, but I believe this to be a tolerable risk in the circumstances.

As regards your proposals to strengthen controls on the storage of hazardous substances, I am, as you know, reluctant to agree to provisions being added during the Bill's passage. We must at all costs avoid this Bill attracting new topics as it progresses through Parliament. On the other hand, you appear to have found a successful means of importing these very desirable provisions which would avoid the scope problem. Before taking a final view, I should like to know more precisely the anticipated timing of amendments on hazardous substances; and at what stage you would propose to announce your intentions.

Finally, I note that, in the light of Parliamentary Counsel's advice, the inclusion of the provisions relating to stray dogs would make the Bill a miscellaneous provisions measure, the Prime Minister has reluctantly accepted the proposal to drop them from this Bill. I am sure that this will make the business managers' task far easier.



I am copying this letter to the Prime Minister, members of MISC 141, John Belstead, Tom King and Bertie Denham, to Sir Robin Butler and First Parliamentary Counsel.

GEOFFREY HOWE

Rt Hon Chris Patten, MP



Low Altitude And Rain  
PVR





CEA

3067

The Rt Hon Chris Patten MP  
Secretary of State for the Environment  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

SECRET  
SECRET

*Dear Chris,*

112 600 1980

*with CAP*

LITTER

The Prime Minister, through her Private Secretary's letter of 21 November, has urged us to find a way of including motorways in the proposed new duty to keep Crown land clear of litter. I have therefore reconsidered the request for an exemption in my letter of 20 November. I thought it would help colleagues to understand my position if I wrote in advance of our forthcoming meeting to discuss Crown immunity generally.

Litter is a serious problem on some sections of motorways. But I do not think it would be acceptable to have a situation in which the Department's motorway cleaning effort could be driven by the courts, without regard to traffic management and safety considerations. Clearing litter from busy motorways is a dangerous and costly task, and a balance must be struck between keeping roads tidy and traffic moving. That balance is a difficult one and I am already reviewing the standards in the Department's own Code of Practice for routine maintenance to improve standards at litter black spots.

I recognise the importance of not bringing Crown immunity into disrepute, and the strength of feeling that the Crown should meet legislative standards. I would be prepared to drop my request for Crown immunity to apply to motorways, if the proposed statutory Code of Practice contained a section specifically dealing with standards for those roads. This would need to be drafted in such a way that it enabled the extent and timing of litter clearance to be balanced against traffic management and safety considerations. This could be done by means of a standard based on prescribed cleaning frequencies, rather than the visual standard envisaged for the rest of the Code.

3



I very much hope that you and other colleagues will find this proposal acceptable. If it is, I will invite officials here to liaise with yours to work up detailed provisions for the Code.

I am sending copies of this letter to the Prime Minister, to other colleagues on "H", the Lord Chancellor, the Attorney General, the Solicitor General and to Sir Robin Butler.

*Yours*

*Ed,*  
*W*

CECIL PARKINSON





*ceps*

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

The Rt Hon Sir Geoffrey Howe QC MP  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1A 2AT

My ref:  
Your ref:

12 December 1989

Dear Lord President

#### LITTER

I am most grateful to colleagues for their helpful and constructive comments on my letter of 13 November on the subject of the litter provisions in the Environmental Protection Bill. The purpose of this letter is to let you and colleagues know how I propose to proceed in the light of those comments.

#### CROWN IMMUNITY

We are discussing separately the wider issue of Crown Immunity in the Bill as a whole and I have written to Richard Luce agreeing that this should be discussed at H Committee on 20 December. As far as our policy on litter is concerned, David Waddington in particular expressed concern at my proposal that the duty to clear litter should extend to the inside of Crown buildings to which the public has access. The Prime Minister commented that she would be happy for the proposal to cover open land alone. I will therefore be proposing that the duty to keep land clear of litter should extend only to land which is open to the air and to which the public has access. My officials are discussing with their opposite numbers the particular problems that are raised for premises occupied by the security services, for prisons and for MOD establishments.

John MacGregor originally proposed that university and polytechnic land should not be covered by the duty, but in the light of colleagues' comments, is now proposing that these institutions should be included. He will be consulting the bodies concerned on this proposal before any announcement is made. Cecil Parkinson has, I understand, been reconsidering the position on motorways, following his letter of 20 November, and will be writing to colleagues shortly on this issue.



## COMMERCIAL FRONTAGERS

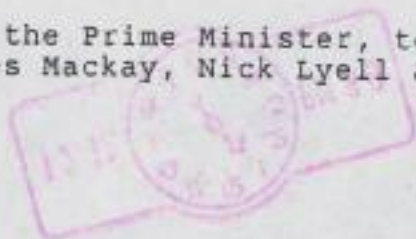
As colleagues will recall, I was proposing both a power for local authorities to issue litter abatement notices against commercial frontagers and that the continuing duty to clear litter should be placed on fast food outlets. Colleagues were content with the former proposal. Nicholas Ridley expressed concern at the burden which the latter proposal might place on businesses and suggested instead that I should take a reserve power to place a burden on any category of commercial frontager should the need arise. Since my letter, we have had further discussions with Parliamentary Counsel that have led me to conclude that my proposal, and Nick's proposed compromise, are in the event unnecessary. Counsel has agreed to our suggestion that a litter abatement notice may also require a commercial frontager on whom it is served to ensure not only that litter is cleared from the frontage but also that the situation does not recur. This is of course entirely consistent with the existing model of statutory nuisance and noise abatement notices. Local authorities will therefore be able to exercise some continuing control over particular premises with a poor record. This will provide a far more flexible and accurate weapon than any general duty on frontagers as a whole. I therefore propose to announce on Second Reading the single proposal for authorities to have a power to issue litter abatement notices to commercial frontagers.

## ENFORCEMENT

David Waddington did not agree that it would be appropriate for the power to issue fixed penalty notices to be extended to the police. I accept that view, although I remain concerned, as does the Prime Minister, on the general issue of enforcement. I have therefore asked my officials to contact their opposite numbers at the Home Office to discuss what help the police might give, short of any statutory changes, in supporting the local authority effort on this front. They will also be discussing with Westminster their experience in enforcing their fixed penalty scheme, as Norman Lamont suggested. I believe that it will be most important that we have a good story to tell on this during the passage of the Bill if our proposals to strengthen the litter laws are to carry conviction.

Malcolm Rifkind expressed concern at the level of the fixed penalty for littering offences, currently proposed as £10. He argued that it should at least match the level of fixed penalty for traffic offences, which will be £16 from next Spring. I have considerable sympathy with this view, which I am sure will be put forward in the course of the Bill. I have asked my officials to consider further an appropriate higher penalty (including parallels with other offences) with a view to amendment during the passage of the Bill.

I am copying this letter to the Prime Minister, to the members of H  
Committee, to Tom King, James Mackay, Nick Lyell and to Sir Robin  
Butler.



CE J Bush

pp CHRIS PATTEN

(approved by the Secretary of  
State and signed in his absence)



Enw. Aff - letter Pr 2





NBAM

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

The Rt Hon Richard Luce MP  
House of Commons  
LONDON  
SW1A 0AA

My ref:

Your ref:

12 December 1989

*Jan Richard*

*attached*

Thank you for your letter of 5 December. I have also seen a copy of Geoffrey Howe's letter to Nicholas Ridley of 1 December on more general issues of Crown Immunity.

Although Geoffrey has suggested that the meeting of 'H' committee on 20 December need not hold up consideration of Crown Immunity in the light of the various Bills in this year's programme, your letter does raise important issues which I have considered urgently. I accept in principle much of what you say and I do think that there is a way forward here, subject to working through the details. I would have no difficulty in agreeing to a clause along the lines of the Food Safety Bill for the Environmental Protection Bill. Consistency is important. But rather more will be needed than simply copying the provisions of the Food Safety Bill into my Bill. The work that will need to be done in following through your proposal will make it impossible to have a clause ready in time for the Bill's introduction. My aim, therefore, would be to bring forward a single, complete clause at Committee Stage.

I am copying this letter to members of H Committee, E(CP) and MISC 138, to Tom King, David Waddington, John Gummer, Patrick Mayhew, Peter Fraser, Alan Rodger, Nicholas Lyell and to Sir Robin Butler and First Parliamentary Counsel.

*Jan W.*  
*Chris*

CHRIS PATTEN



Eu Aff And Rom PV12





Prime Minister<sup>2</sup>  
 This "crossed in the post"  
 with your own comments  
 against Local Registration  
 Schemes.

CCP/ST  
 ✓

SCOTTISH OFFICE  
 WHITEHALL, LONDON SW1A 2AU

But you may like to  
 note Mr Reid's position.

CBS  
 15/12  
 Noted  
 mb

The Rt Hon Chris Patten Esq MP  
 Secretary of State for the Environment  
 2 Marsham Street  
 LONDON  
 SW1P 3EB

12 December 1989

Dear Chris,

DOGS

Thank you for sending me a copy of your letter of 7 December to the Lord President.

flap  
 ✓

As you know, a separate "Action on Dogs" consultation paper was issued in Scotland, containing a broadly similar package of proposals. The response to those proposals in Scotland whilst generally positive, also contained overwhelming support for some form of dog registration.

As well as the arguments advanced in the third paragraph of your letter concerning the polluter pays principle, the belief that registration would lead in the longer term to a more responsible attitude to dog ownership and the means of providing an incentive for neutering or spaying, many respondents also saw the registration fee as a means of addressing the resources question which was a cause for concern particularly amongst local authorities themselves.

I therefore welcome and fully support your proposals that we should now indicate willingness to consider registration and should consult local authorities and other interested groups on the form and means of implementing a registration system. If colleagues agree to this, I should wish to make a parallel announcement in relation to Scotland and should be grateful if your officials could keep mine informed as to timing and other details of your own proposed announcement.

While I agree that we should stop short of any national centrally administered registration system, I should wish to enter into consultation with an open mind on the kind of arrangements which might best be introduced in Scotland. My own initial view is that there would be great merit in ensuring that local schemes are run on similar lines and I agree with you that we would want to set certain limits to the scope for local discretion.



I am copying this to the Prime Minister, other members of H Committee,  
Tim Renton and Sir Robin Butler.



Yours ever,  
Malcolm Rifkind

MALCOLM RIFKIND

ENV. AFF. Acid Rain Park 13





CONFIDENTIAL



*me pm*

10 DOWNING STREET

LONDON SW1A 2AA

*From the Private Secretary*

11 December 1989

*Dear Kate,*

ENVIRONMENTAL PROTECTION BILL

The Prime Minister has seen a copy of your Secretary of State's letters of 28 November and 7 December about the provisions of the Environmental Protection Bill; and setting out further proposals for the control of dogs.

She has commented on two points. As you know, she had expressed concern that provisions should be removed from the Bill which clarify responsibilities for the clearance of litter from highways. Your Secretary of State's letter of 28 November suggests that clear lines of responsibility can in practice be established between highway authorities and district councils without legislation. The Prime Minister would therefore be content for the provisions to be excluded from the Bill, provided the Secretary of State for Transport can confirm that what is now proposed will actually work effectively in practice.

Your Secretary of State has put forward a number of new proposals for controlling dogs, having accepted that the provisions on stray dogs should be removed from the Bill. His letters stress that it is Counsel's advice that the inclusion of these provisions in the Environmental Protection Bill would have the effect of making it into a miscellaneous provisions bill. Given this new information, the Prime Minister reluctantly accepts that these provisions should not be included. However, she is opposed to the introduction of a power for local authorities to create a local registration scheme. The arguments against registration schemes were rehearsed by the Government earlier this year, in private and public, and the Prime Minister takes the view that these apply equally to local as to national schemes. She thinks that a change of policy now is particularly undesirable, given the emotions aroused earlier this year by the RSPCA campaign and the weight of the Government's arguments against it.

The Prime Minister considers that a registration scheme is not necessary for identifying dogs: what matters is proper enforcement of collar and tag regulations. She would like to see vigorous action to enforce the existing law on identity tags.

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*pm*

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- 2 -

She would also like consideration to be given to whether there is any scope for action now on the control of stray dogs through the review of the relevant byelaws.

I am copying this letter to the Private Secretaries to members of MISC 141, Sonia Phippard (Cabinet Office), Philip Mawer (Cabinet Office), and Richard Wilson (Cabinet Office).

Yours sincerely,

Caroline

CAROLINE SLOCOCK

Miss Kate Bush,  
Department of the Environment.

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AK

PRIME MINISTER

8 December 1989

DOGS

with CAS?

Chris Patten's letter of 7 December to the Lord President. This raises two main issues:

- exclusion of provisions on stray dogs from the Environmental Protection Bill, on grounds of scope of the Bill;
- an announcement that the Government is minded to legislate to permit local authorities to establish local dog registration schemes if they wish.

Stray dogs : Exclusion from EP Bill

The reason for this is that, otherwise, the scope of the Bill will be widened beyond purely environmental matters, thus opening the door to wide-ranging amendment. This would simply hinder the Bill's passage, but there is the particular worry that amendments proposing a national dog registration scheme would be tabled.

Given the strength of feeling in the House earlier this year, there must be a reasonable chance that the Government would be defeated on such amendments. The EDM last June in support of the RSPCA campaign got 250 signatures, including 113 Conservatives.

Chris Patten takes it as read that, because of this, it is not practicable to widen the scope of the Bill. The Lord President supports this on business management grounds.

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The arguments in support of this view are strong. But on the other hand, as the Prime Minister has already minuted, the proposals on stray dogs were an important part of last summer's package on dogs. They have also been widely supported as a step in the right direction.

#### Local Dog Registration Schemes

Chris Patten seeks agreement to his announcing an intention to legislate for a power for local authorities to set up such schemes if they wish. No commitment to the timing of legislation would be given but he is presumably thinking of 1990/91.

His main purpose in putting this forward is to head off pressure for a national scheme and draw the fire of the dogs lobby. But he also points to strong support from local authorities for such powers, mainly on the grounds that dog owners should finance the cost of local dog control schemes.

There is no doubt in my mind that this would be seen as a U-turn by the Government on a very emotive issue. The difference between local and national registration is one of degree, not principle, and the Government would be seen as bowing to pressure and putting aside purely on grounds of expediency the strong arguments of principle against registration which it has previously put forward so firmly.

Drawing the fire of the dogs lobby is not a very satisfactory basis for policy. And if legislative time could not be found next year, it could easily become a manifesto commitment by default.

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## Arguments against registration

The arguments against a national scheme were put strongly in the Dogs consultation paper in the summer, and have been stated by the Prime Minister and her colleagues on numerous occasions this year. Because they are arguments of principle, they apply just as much to local registration schemes:

- registration would do nothing to assist dog welfare or control. Owners are already required to have identification tags on dogs in public places;
- a local tax on dog owners is an inefficient means of funding dog control measures. It would be a tax on responsible owners to deal with problems created by the irresponsible;
- the dog licensing scheme did nothing to control problems caused by irresponsible dog ownership;
- any scheme would be bureaucratic, especially given the need for exemptions for pensioners, etc;
- a registration scheme is not necessary for identifying dogs. What matters is proper enforcement of collar and tag regulations. Identification was not an issue in any of the recent Rottweiler cases;
- (for local schemes) stray dogs are hardly likely to respect local authority boundaries.

## The Way Forward

There are three alternatives:



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First, simply to widen the scope of the EP Bill to get the measures on stray dogs through, and tackle head-on the likelihood of amendments in favour of a national registration scheme.

Second, adopt Chris Patten's proposal.

Third, accept that the scope of the Bill should not be widened, and admit that, on Counsel's advice, the stray dogs proposal cannot be included in the Bill. Announce that they will be brought forward as soon as possible.

The first clearly has dangers. The second does too. Not only will it not necessarily head off pressure for a national scheme, but it will also be politically damaging. Once the Government concedes the principle of registration, there is no going back, and it could be an albatross around the neck. However, the third will cause a moment's embarrassment, but will avoid any hostage to fortune on registration.

#### CONCLUSION

It is unfortunate that DOE has taken so long to wake up to the difficulties of including stray dogs in the EP Bill. But the arguments against widening the Bill's scope are very strong. The last thing the Government wants is to be distracted after Christmas by a resurgent RSPCA campaign for a national registration scheme. The price of this is a delay on implementing the stray dogs proposals.

The only argument in favour of local registration schemes is local accountability: why shouldn't a local authority do this if it wants? But the Government's firm arguments

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of principle against registration are much more telling, and as Chris Patten suggests, the Government would be drawn in to the debate, to set parameters for fees, exemptions, etc.

The whole RSPCA-led campaign would open up again, with the ground cut from under the Government's feet because it had conceded the principle of registration.

Thus one is left with an honourable tactical withdrawal. This is not palatable. But it is the most realistic option, with no foreseeable hostage to fortune once the embarrassing deed is done. And it can still be coupled with action on aspects of the package not requiring legislation: proper enforcement of the existing collar and tag legislation. There may also be scope for action through bye-laws.

## RECOMMENDATION

- firmly reject any concession to the dogs lobby. Resist registration as a matter of principle, and as a matter of politics given the emotions aroused earlier this year by the RSPCA campaign and the weight of the Government's arguments against it;
- reluctantly accept that widening the scope of the EP Bill is not practicable;
- conclude therefore that putting a duty on local authorities to deal with stray dogs will have to be put on ice for the time being;
- but urge that vigorous action should be taken to ensure proper enforcement of the existing legislation on identification tags. Consideration should also be given to whether there is any scope for action on strays through the review of bye-laws on dogs.

*John Mills*

JOHN MILLS



ENVIRONMENTAL PROTECTION BILL

*was CAS?*  
Chris Patten's letter of 28 November to the Lord President. This raises several issues, but the main one, dogs, is now the subject of a separate letter from Chris Patten and I am minuting on that separately.

Scope of the Bill

Parliamentary Counsel has advised that it is necessary to avoid provisions in the Bill which go beyond the 'environment'. This is to avoid creating what amounts to a miscellaneous provisions bill with scope for wide-ranging amendments that would make the Bill's passage harder. In this particular case of stray dogs, for example, the fear is that scope would be created for amendments proposing a national registration scheme, on which the Government might be hard put to avoid defeat.

This was the unstated reason behind the Lord President's letter of 16 November about removing the stray dogs proposals (on which you recorded the Prime Minister's concern in your letter of 21 November).

Litter and Highways

Bearing in mind Counsel's advice, it is now proposed not to enable the Secretary of State for Transport to make regulations about highway maintenance generally, in order to distinguish cleaning as a particular function for separate treatment. Instead, it is proposed to make this distinction by agreement. The aim is unchanged: District Councils to take over all cleaning functions for roads now done, generally, by County Councils as highway authorities.



Chris Patten and Cecil Parkinson both regard this as de minimis. I am a little concerned, however, because the letter says the distinction could be drawn by the Courts, if necessary. This implies that agreement among all the parties may not always be expected to work, and squabbles about who does what will certainly not get the litter cleaned up better. Some explicit comment from Cecil Parkinson is advisable before final agreement is given to this.

### Hazardous Sites

The concern here is that including this in the EP Bill at the outset could give rise to unwelcome amendments to planning legislation. There is however to be a separate hazardous substances Bill in the New Year as part of the consolidation of planning law and the plan is to wait until this is passed before bringing forward necessary Government amendments to the EP Bill. This, it is said, will enable planning to be kept firmly out of the EP arena.

This seems a reasonable way to proceed.

### RECOMMENDATION

- On hazardous sites, the Prime Minister need only note the course of action proposed.
- On litter and highways, while noting the reasons for what is proposed, she should express caution lest the lack of regulatory precision creates uncertainty as to the cleaning duties of District Councils and the other maintenance functions of Highway Authorities. Why is it said that the distinction may need to be settled, if necessary, by the Courts?

Cecil Parkinson should be invited to confirm that what is now proposed will actually work in practice.

- on dogs, the Prime Minister should reserve comment for her response to Chris Patten's further letter of 7 December.

*John Mills*

JOHN MILLS



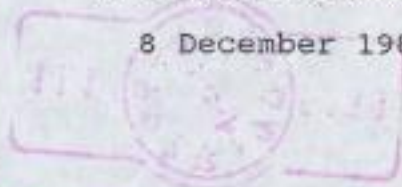
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*NRBM*

*GGP*  
PRIVY COUNCIL OFFICE  
WHITEHALL, LONDON SW1A 2AT

8 December 1989



*See this*

ENVIRONMENTAL PROTECTION BILL: RECYCLING

Thank you for your letter of 23 November *gap* seeking colleagues' agreement to including references to recycling in the waste management provisions of the Environmental Protection Bill.

The Prime Minister has written indicating her support for the proposals. Peter Walker, Nicholas Ridley, Malcolm Rifkind and Malcolm Rifkind and Malcolm Caithness were also in agreement. Peter was content on the basis that officials were considering separately the effect of the proposals on existing contracts. Nicholas and Malcolm asked for their officials to be closely involved with the preparation of guidance to local authorities on the assessment of disposal options. Malcolm said that similar arrangements were needed in Scotland. His suggestion that we restore the power in the Control of Pollution Act 1974 to require local authorities to produce waste management plans, which we repealed in 1980, needs to be further considered; but this need not hold up a decision on your present proposals.

No other colleague has commented and you may take it, therefore, that you have H Committee's agreement to your proposals.

I am copying this letter to the Prime Minister, the other members of H Committee, Sir Robin Butler and First Parliamentary Counsel.

GEOFFREY HOWE

Christopher Patten MP  
Secretary of State for the Environment

En App - Acid Rain Pr 12





## ENVIRONMENTAL PROTECTION BILL: LITTER AND DOGS

You will recall that the Lord President and Secretary of State for the Environment agreed to remove from the Bill provisions on stray dogs; and to consider further whether to include proposals - amongst other things - clarifying the responsibilities of the relevant authorities for clearing litter from highways. I minuted your concern about both these points and particularly the last.

Litter

At Flag A, Mr Patten explains that the loss of these particular litter provisions will make no real difference - the same results can be achieved by agreement between the relevant authorities. The argument for leaving them out of the Bill is that they widen the scope of the Bill to highways - and to amendments in this area. John Mills - who gives advice at Flag C - suggests that you agree that these provisions should be omitted. But he thinks that you should invite Mr Parkinson to confirm that what is now proposed will actually work in practice.

Agreed  
ms

Dogs

The letter from the Lord President's office recording the decision to remove the provisions on stray dogs did not make clear that this was necessary partly because Counsel advises that they would broaden the Bill into a "Miscellaneous Provisions Bill". This would open the Bill to any amendment under the sun. The letter did make clear that the strong fear that, if they were included, the Government would lose a vote on a national registration scheme.

Mr Patten at Flag A takes it as read that the provisions must be removed. A further letter at Flag D sets out new proposals for introduction in due course (perhaps 1990/91?) of a power for local authorities to introduce local registration schemes. The aim of



this appears to be twofold:

- to help them finance the costs of rounding up strays. Mr Patten supports this under the "polluter pays" principle;
- to head off calls for a national registration scheme.

This will be seen as a U-turn. The arguments against registration schemes were rehearsed by the Government fully earlier this year, in private and in public, and apply equally to local as to national schemes.

The real question now is whether the Government wishes to change - and to be seen to change - its policy. A decision must also be taken on whether to include provisions on dog control in the new Bill or wait for a later opportunity.

John Mill at Flag E sees no real way round Counsel's advice against including the provisions in the Bill. He thinks the best way forward would be for "an honourable tactical withdrawal" - announcing that the provisions on stray dogs have been withdrawn for technical reasons and will be brought forward as soon as possible. He thinks that proposals for local registration should be opposed and suggests that you:

- should make clear your opposition both as a matter of principle and as a matter of politics (it could only be seen as backtracking on earlier statements);
- urge vigorous action to enforce proper enforcement of the existing law on identification tags;
- ask consideration to be given to whether there is any scope for action on strays through the review of bye-laws on dogs.



There do not seem to be any desirable options available. If the Government follows this course, it is still likely to be criticised severely for delaying its proposals. This delay may well be interpreted as demonstration of a lack of a political will to tackle this problem. It may only heighten calls for a national registration scheme and the pressures to introduce one as and when legislation is introduced. The Lord President and Mr Patten clearly think there is a strong danger the Government would lose a vote on this issue unless some concession is made. If a concession must be made, then Mr Patten's is quite a good one.

It seems to me that John Mills is right in the action he proposes to handle the problem of dogs. But Mr Patten's approach may be the only practical - although far from attractive - solution to a political dilemma.

Do you agree to:

- accept that these particular litter provisions should be left out, provided Mr Parkinson gives the commitment suggested by John Mills? *Yes not*

- to what John Mills proposes for the handling of the provisions on dogs? *Yes not*

- or do you agree that it should be handled in the way Mr Patten suggests?

*CAS*

*mt*

Caroline Slocock

8 December 1989



cap.u.



2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

The Rt Hon Sir Geoffrey Howe QC MP  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1A 2AT

My ref:  
Your ref:

December 1989

*Dear Lord President*  
*will request required*

DOGS

As colleagues are aware, we issued in August a consultation paper, "Action on Dogs", containing a package of proposals concerned with dog control. In particular, we proposed a new duty on local authorities to collect up, hold and dispose of stray dogs and a clarified duty on them to enforce the existing requirement for dogs to wear a collar and identification tag in public. The paper also drew attention to our parallel proposal, which we are taking forward as part of our litter proposals, to require local authorities to clear up dog faeces and invited comments on operation of the existing system of dog control orders and byelaws. All these proposals complemented those on dangerous dogs, put forward by the Home office, which have now been enacted in the Dangerous Dogs Act 1989.

Although problems of scope have meant that we have decided not to include provision on dogs in the Environment Protection Bill, I feel that I should report to colleagues on the outcome of our consultation and seek their views on how we should proceed. Respondents, including the local authorities themselves, generally supported the proposed new duty on authorities to deal with stray dogs, subject to concerns about its resource implications. They also, on the whole, supported a clarification of the power to enforce the collar and tag requirement. Many, particularly among the local authorities, had constructive suggestions to make about the present system of dog control orders and byelaws, which officials of my Department, the Home Office and the Department of Transport are currently reviewing. However, it will come as no surprise to colleagues to know that overwhelming support was expressed by respondents, including the local authorities, for the introduction of some kind of dog registration scheme, in the main on the grounds that dog owners should finance the cost of local dog control measures.

The more extreme lobbyists have argued that a national registration scheme is essential for the purpose of identifying dogs and re-uniting strays with their owners. I do not accept that argument for a moment. I believe that our proposal to enforce more strictly the existing identification requirement is a far more effective





means of doing so. I do however have some sympathy with two arguments in favour of some kind of scheme, which are put forward by the more moderate element (including, for example, the ADC): first, that there is a case for applying the polluter pays principle in this area; and secondly, that the requirement to register might engender in the longer term a more responsible attitude to dog ownership. It might also incorporate an incentive for owners to have their dogs neutered or spayed as some contribution to reducing the numbers of unwanted dogs.

These arguments, and the overwhelming support expressed for some kind of registration scheme by our respondents, have led me to conclude that we should make a limited move on the registration issue. I have in mind a discretionary power for local authorities to introduce local registration schemes (which would apply to dogs owned by residents of the area) if they wish, including a power to charge and retain a registration fee. It would be open to authorities to decide (subject to certain limits which I think we would want to set) on the level of fee and local exemptions. Local authorities could of course co-operate in operating schemes, for example by co-ordinating registration numbers and using centralised computer facilities. Such a power would enable local authorities to respond flexibly to the local situation, while involving central Government as little as possible.

The local authorities, animal charities and Parliamentary dog lobby are not going to let the registration issue drop. They will no doubt be disappointed at the absence of the dog provisions from the Environment Protection Bill (we are already being pressed on whether and how we are proposing to take our dogs package forward). I believe that the proposal I have in mind, along with the package of measures we have already announced, would do much to meet the genuine concern of many local authorities while stopping well short of a full-scale national registration scheme. I therefore seek colleagues' agreement to my announcing, within the next week or so, that we are minded to move in this direction and that we will be consulting the local authorities and other interested groups over the coming months on how such schemes might work and what regulations, if any, we might need to make. Clearly legislation will not be a matter for this Session. If, however, the announcement is to succeed in drawing the fire of the dog lobby, I believe that it would have to carry with it some genuine commitment to the necessary legislation in the foreseeable future.

I am copying this to the Prime Minister, other members of H Committee, Tim Renton and to Sir Robin Butler. I would be grateful for responses by close of play, Wednesday 13 December.

*Yours sincerely*

*R. Patten*

By CHRIS PATTEN

*(Approved by the Secretary of State and signed in his absence)*





ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

The Rt Hon Chris Patten MP  
Secretary of State for the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

- 5 DEC 1989

*Dear Sir,*

LITTER

*at final*

I have noted the concern expressed by the Prime Minister through her Private Secretary's letter of 27 November about the exclusion of universities and polytechnics from responsibility for clearing up litter. My difficulty is that I am pursuing policies designed to reinforce the position of universities and polytechnics as independent corporate bodies. I am encouraging them, for example, to diversify their sources of funding and they have already increased the proportion of their total income from private sources. But I recognise that there is a fine dividing line on this point. The bulk of funding for universities and polytechnics still comes from the public sector.

I am therefore prepared, on balance, to accept that they should carry the same responsibility over litter as other public services. What does worry me is that universities and polytechnics do not expect to be covered by this legislation since your earlier consultative document gave no hint of this. I must therefore ask that I am given time to consult those concerned before the particular proposal is made public in your Bill. My officials will proceed with the arrangements to consult straight away. Your officials will need to be in touch with the specification of the relevant institutions in the legislation.

I am sending copies of this letter to the Prime Minister and to those receiving your earlier letter of 13 November to Geoffrey Howe.

*Lewis*  
*gd*



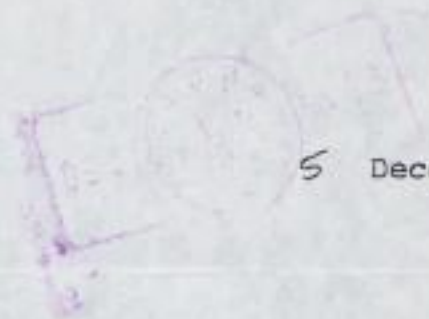
*Handwritten initials*



NBPM

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Chris Patten MP  
Secretary of State  
Department of the Environment  
2 Marsham Street  
LONDON SW1P 3EB



5 December 1989

*Dear Chris,*

ENVIRONMENTAL PROTECTION BILL: RECYCLING

Your letter of 23 November to Sir Geoffrey Howe invited colleagues' agreement to the inclusion in the Bill of supplementary references to recycling.

I have seen Nick Ridley's letter of 30 November welcoming your proposals. I generally agree with Nick's points. In particular, it will be important to consider the costs and benefits carefully in preparing detailed guidance on disposal options. I should be grateful if your officials would keep mine in touch with the further work that will be necessary,

I am copying this letter to the Prime Minister, other members of H Committee and to Sir Robin Butler.

*You are  
Malcolm*

THE EARL OF CAITHNESS

Env Affairs. Australia  
P12







PRIVY COUNCIL OFFICE  
WHITEHALL, LONDON SW1A 2AT

WBPm

1 December 1989

In N whole

CROWN IMMUNITY

WILL REQUEST IF REQUIRED

Thank you for your letter of ~~17~~ 7 November welcoming the suggestion in mine to John Gummer of 7 November that I convene a meeting to discuss the issue of Crown Immunity. I agree that this should look at the issue in general and not just in the context of this session's Bills. I was grateful for Paddy Mayhew's support also for this course, and discussion in L Committee last week has fortified me in it.

I propose that we consider the issues in H Committee, initially at least. They go wider than the competition policy aspects you mention, important though these are. The Machinery of Government Division of the OMCS will prepare a paper to form the basis of our discussion, which it will first clear with officials in interested Departments. I will ensure that the paper is copied to E(CP) as well as H Committee members, so that they too can register their views. We can consider how to handle any remaining purely competition policy issues in the light of the H discussion.

I do not intend that the H discussion should hold up consideration of the particular Crown Immunity issues which arise in relation to various Bills in this year's programme. Colleagues concerned should, therefore, press on with trying to resolve outstanding issues (such as those listed in Chris Patten's letter to me of 24 November) as quickly as possible. The H meeting on 20 December will be an opportunity for us to stand back and reflect on our policy on Crown Immunity as a whole, about which I know a number of colleagues have reservations. If colleagues cannot resolve more pressing issues relating to their Bills bilaterally, I should be happy to chair earlier meetings specifically to do so.

While I appreciate that, as Paddy Mayhew has suggested in his letter to Chris Patten of 22 November, it would in the best of all worlds be desirable to postpone determination of these issues until we have had our wider discussion in H, the need to press on with introducing the Bills precludes that option.

Contd 2/ . . .



I am copying this letter to members of H Committee, E(CP) and MISC 138, to Tom King, David Waddington, Chris Patten, John Gummer, Patrick Mayhew, Peter Fraser, Alan Rodger, Nicholas Lyell, Richard Luce, and to Sir Robin Butler and First Parliamentary Counsel.

GEOFFREY HOWE

The Rt Hon Nicholas Ridley MP





File  
JA

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

27 November 1989

Dear Mr,

LITTER

The Prime Minister has seen a copy of the Secretary of State for Education's letter of 21 November to your Secretary of State about the proposals on litter which he intends to include in the Environment Protection Bill. She accepts that it is sensible to place the litter duty on schools on governors rather than local authorities. However, she is very concerned that universities and polytechnics should not be excluded from any responsibility for clearing up litter. She suggests that, as they are not a local authority's direct responsibility, the duty should be laid direct on their governing bodies, by analogy with what is proposed for school governors. She suggests that this approach might also be used in relation to NHS hospitals, including future self-governing hospitals.

I am copying this letter to the Private Secretaries of the members of H Committee, John Colston (Ministry of Defence), Paul Stockton (Lord Chancellor's Office), Alan Maxwell (Lord Advocate's Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,  
Caroline

(CAROLINE SLOCOCK)

Alan Ring, Esq.,  
Department of the Environment.

AR

PRIME MINISTER<sup>①</sup>

LITTER

Letters on this subject are still trickling in as in the attached. The Attorney General (Flag A) and the Solicitor General for Scotland (Flag B) have commented on the way of getting round the problem of Crown immunity in applying the duty to the Crown. The main point is to ensure that the Bill is consistent with what is proposed elsewhere eg in the Food Bill. The Lord President is to hold a meeting to look at this.

The Chief Secretary (Flag C) has also commented that the costs of the litter provisions for Government and local authorities will have to be absorbed within existing provisions. He also expresses doubts about using the police for spot litter fining.

You may wish to comment on the letter from the Secretary of State for Education and Science (Flag D). You may recall that you said when you saw the consultation document on litter that you wanted the provision to be applied to schools and colleges. Mr MacGregor is suggesting that the duty should be placed on school governors rather than local authorities (which seems sensible); but that Polytechnics and Universities should be excluded from any direct duty placed on local authorities or the Crown as they are independent bodies. John Mills (see flag E) emphasises that it is important not to leave them out and that the best way of ensuring this would be to place a duty on the governors in an analagous way to schools. He also suggests that the same approach might be applied to NHS hospitals, including future self-governing hospitals.

Content to comment on Mr MacGregor's letter in the way John Mills proposes?

CS

Caroline Slocock  
24 November 1989

Yes



Flag E

LITTER

with CA?

We had a word about John MacGregor's letter of 21 November. He makes two main points:

- exclusion of universities and polytechnics from the purview of local authorities' litter duty, on grounds of their independent status;
- in respect of schools, imposing the duty on governors rather than local authorities.

On the first of these, there cannot and should not be a general exclusion. The analogy with independent schools is specious. While some 'parts' of some universities (eg Oxford colleges) may enjoy private rights over their property, these institutions are, in general, public and public-financed, even if independent.

You will recall that you minuted out on 13 July to record the Prime Minister's strong view that college, and school land should not be excluded.

The way forward is either to ensure they are on the list of places which local authorities can designate as litter control areas; or to impose the litter duty directly upon them, in the same way as with statutory undertakers such as British Rail. The second of these seems preferable (see below).

On the second point raised by John MacGregor, it does make sense to impose the duty on governors. As a result of the education reforms, they will from next year take on direct

responsibility for such things as cleaning and minor maintenance of premises. Litter control clearly falls into this category.

It follows tht it would be best to treat the governing bodies of universities and polytechnics in exactly the same way. Thus the direct litter duty would be imposed on:

- local authorities
- the Crown, in certain circumstances
- statutory undertakers
- school and CTC governors
- university and polytechnic governing bodies

in respect of land and premises to which the public has access or is clearly visible (eg railway embankments).

One gap in all this is the Health Service. DoH has yet to respond, but it must be right to include on the list health authorities, by analogy with local authorities, and the trustees of self-governing hospitals, by analogy with school governors. This point is worth flagging.

I have no comment on the letters just in from Norman Lamont and Alan Rodger.

#### Recommendation

Comment is needed on John MacGregor's letter, to reinforce what you wrote on 13 July, to the effect that:

- universities and polytechnics must not be left out;
- accepting that they are not a local authority's direct responsibility, the litter duty should be laid direct on their governing bodies, by analogy with what is proposed for school governors.



It would also be wise to flag the need to ensure proper coverage of NHS premises, including future self-governing hospitals. In this case, the way forward should be to put the litter duty directly on to health authorities and the trustees of self-governing hospitals.

*John Mills*

JOHN MILLS



01-936 6269

The Rt Hon Christopher Patten MP  
Secretary of State for the Environment  
2 Marsham Street  
London  
SW1P 3EB

ccfu  
FlagA  
ROYAL COURTS OF JUSTICE  
LONDON WC2A 2LL

22nd November 1989

Dear Secretary of State,

LITTER

Thank you for sending Patrick Mayhew a copy of your letter of 13 November 1989 to Geoffrey Howe.

Your letter discusses the question of applying the duty to clear litter to Crown land. It is our firm view that Government Departments ought to comply with standards set by legislation and to co-operate with enforcement authorities so far as is appropriate without being put under a duty to do so. I regard it as indefensible for a Department to rely on Crown immunity as a defence for failing to meet legislative standards. The question whether a Bill imposing duties is to apply to the Crown is therefore really a question as to the manner of enforcement.

You suggest in your letter that the Food Safety Bill might form a model for your proposals in relation to Crown immunity. The formula in that Bill following discussions that I had with First Parliamentary Counsel is that the enforcing authority may seek a formal declaration from the court that the Crown has acted unlawfully. Such declarations are always obeyed by Government and the Minister with Departmental responsibility would thereupon have to take immediate remedial action. The only special problem in relation to litter is that much of the enforcement will be in the Magistrates Court, which is not normally empowered to grant a declaration.





The issue of Crown immunity is however a matter of policy as well as a matter for legal guidance. Geoffrey Howe has proposed a meeting to consider the issue generally. It would, I think, be useful to consider your proposed legislation at that meeting and to defer final judgment on the issues of Crown immunity and declarations in relation to the legislation for the time being.

I am copying this letter to the Prime Minister, the other members of H Committee, Tom King, James Mackay, Alan Rodger and Sir Robin Butler.

Yours sincerely,  
P. Mackay  
for Solicitor General.

(Approved by the Solicitor General  
and signed in his absence)

Enn Allaire: letter







The Rt Hon Christopher Patten MP  
Secretary of State for the Environment  
2 Marsham Street  
LONDON SW1P 3EB

*ceh*  
*Page B*  
Lord Advocate's Chambers  
Fielden House  
10 Great College Street  
London SW1P 3SL

Telephone: Direct Line 01-278 6829  
Switchboard 01-278 3000  
Fax 01-278 6834

22 November 1989

*Dear Chris,*

LITTER

Malcolm Rifkind has copied to me your letter of 13 November to Geoffrey Howe in which you sought views on imposing on the Crown a duty to clear litter.

*- file with CAS*

The question as to whether on general policy grounds it is desirable to apply the duty to the Crown is clearly one for you. Looking at the matter from the legal standpoint I should certainly not wish to see Crown Immunity used to allow the Crown to adopt lower standards than others. The justification for Crown Immunity is on the contrary that the Crown can be expected to equal or exceed the standards imposed by others. If it is invoked as a shield for bad management, then the doctrine will fall into disrepute and will be that much harder to invoke successfully in cases where for good reasons the Government would wish to apply it.

Against that background I have already been considering the question of Crown Immunity in the context of the Food Safety Bill and the National Health Service and Community Care Bill and I knew that a similar point was likely to arise in your Bill. Having now seen the papers on litter, it seems to me that there are some differences between what you propose about enforcement of any duty on the Crown and the approach to enforcement in these other Bills, arising partly from the nature of the problem. I am also aware that Geoffrey Howe has proposed a meeting to consider the issue of Crown Immunity generally. Given that meeting and the difficulties we encountered in looking at the proposals for the Food Safety Bill, I would prefer to reserve my position on what you propose about enforcement until after that meeting.

I am copying this letter to the Prime Minister, the other members of H Committee, Tom King, James Mackay, Nick Lyell and Sir Robin Butler.

*Yours*

*Alan*

ALAN F RODGER



UNCLASSIFIED



*Ally C.*  
*celjv*

Treasury Chambers, Parliament Street SW1P 3AG

The Rt Hon Christopher Patten MP  
Secretary of State for the Environment  
Department of the Environment  
2 Marsham Street  
London  
SW1P 3EB

22 November 1989

*Dear Secretary of State*

LITTER

Thank you for sending me a copy of your letter of 13 November to the Lord President seeking colleagues approval to the further measures on litter. I have also seen the Secretary of State for Scotland's letter of 16 November.

2. You have not offered any opinion on whether these further proposals would increase the burden on Government departments or local authorities. In themselves they should not impose any significant increase in costs, but if they do I would expect these costs to be absorbed from within existing provisions.

3 The question of the police powers to issue fixed penalty notices for littering is primarily one for David Waddington, but I do have some doubts whether the police, who have many tasks of higher priority to perform, will make sufficient use of their powers to bring about any real improvement. I understand that the litter enforcement officers of Westminster Council have proved successful and good value for money - perhaps we should consider ways to encourage other authorities to follow Westminster's example.

4 I am copying this letter to the Prime Minister, to the other members of H Committee, Tom King, the Lord Chancellor, Attorney General and to Sir Robin Butler.

*You sincerely*  
*Norman Lamont*

NORMAN LAMONT  
(Approved by the Chief Secretary and signed in his absence)



GNV. AFFAIRS: UTHU pr 2





ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

Page D  
CCFV

BF  
23/11 pm  
CMB

The Rt Hon Chris Patten MP  
Secretary of State for the Environment  
2 Marsham Street  
London SW1P 3EB

7 November 1989

*Dear Chris*



*flat*

LITTER

I have seen your letter of 13 November to Geoffrey Howe, and have no comments on the particular additions which you propose to the Environmental Protection Bill.

I thought I should write however to set the record straight on the way in which we have suggested education establishments should be dealt with in the Bill. This is mentioned in the third paragraph of your letter. Firstly we have concluded that it would not be right to include universities and polytechnics in the Bill. They are independent corporate bodies, and should be treated by analogy with independent schools and other private institutions rather than maintained schools and colleges. We do wish to include grant-maintained schools, and CTCs and CCTAs.

Secondly, it would be inappropriate to impose the duty in respect of maintained education establishments on the local authority - the governing bodies of these institutions are in day to day control of their conduct, and many will in future also control their own budgets. Greater powers and responsibilities for governors are at the heart of our education reforms. We therefore propose you should take a power to lay the new duty on governing bodies, in the same way as you will be able to extend it to specified statutory undertakers. This way of proceeding has been discussed between officials of our Departments, and I understand presents no problems.

I am copying this letter to the recipients of yours.

*Lawson,*  
*fl*



ENV AFFAIRS: Letter P12





TTL PAS  
CC PU

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

21 November 1989

*Dear Alan,*

LITTER

Further to my letter of yesterday, the Prime Minister has now seen the Secretary of State for Transport's letter of 20 November and the Home Secretary's letter of 17 November on this subject.

The Prime Minister notes the Home Secretary's doubts about the use of police to enforce fixed penalty notices for litter but remains concerned that an effective means of enforcement should be found. On the removal of Crown immunity for litter offences, she is content for the interior of Crown buildings to be exempt from the duty which will be placed on the Crown and which will apply to Crown land open to the air, with certain exceptions. However, she thinks that the Crown should be subject to a binding duty to clear litter from motorways. She has commented that the motorways are a national disgrace and must be cleared. She recognises that there are special circumstances affecting the collection of litter on motorways because of the need to maintain safety and to ensure traffic flow. But she very much hopes that a duty could be placed on the Crown in respect of motorways which could take into account these special circumstances.

I am copying this letter to the Private Secretaries of the members of H, John Colston (Ministry of Defence), Paul Stockton (Lord Chancellor's Office), Juliet Wheldon (Attorney General's Office) and Trevor Woolley (Cabinet Office).

*Yours sincerely,  
Caroline Slocock*

CAROLINE SLOCOCK

Alan Ring, Esq.  
Department of the Environment





file as: Home  
Litter (SLH)

10 DOWNING STREET

LONDON SW1A 2AA

*From the Private Secretary*

20 November 1989

Dear Alan,

LITTER

The Prime Minister has seen your Secretary of State's letter of 13 November to the Lord President and the subsequent correspondence from the Secretary of State for Scotland, the Chancellor of the Duchy of Lancaster, the Minister for Agriculture and the Secretary of State for Trade and Industry.

The Prime Minister agrees that the duty which is to be laid on statutory undertakers should be extended to the Crown in the way Mr. Patten proposes. She also agrees that a power should be included in the Bill for local authorities to issue Litter Abatement Notices against commercial frontagers in respect of the area of the pavement in front of their premises. However, she shares Mr. Ridley's concern about the risk of proliferation of local rules and uneven enforcement; and agrees that these powers should be tightly defined and designated in Regulations. On fast food establishments, the Prime Minister would like to see a duty placed on these establishments which would, for example, require the business to sweep the pavement regularly and provide adequate litter bins, etc. She hopes that 'fast food restaurants' would include all restaurants, cafés, etc. and delicatessen shops as they all tend to put out rubbish sacks on the pavement. She very much agrees with Mr. Ridley that a reserve power should be included in the Bill which would enable action to be taken against any class of frontager who has failed to respond to the threat of litter abatement notices.

The Prime Minister recognises the importance of finding an effective way of enforcing the fixed penalty scheme for litterers and is anxious that a way of doing so should be found. She notes that Mr. Patten would like to explore with the Home Office the question of using the police. She agrees with Mr. Rifkind's suggestion that the level of spot fines should be £16 rather than £10 to bring it in line with the higher level of penalty for parking offences which will be introduced from April 1990.

ats.

I am copying this letter to the Private Secretaries to Members of H Committee, John Colston (Ministry of Defence), Stephen Wooler (Law Officers Department) and Trevor Woolley (Cabinet Office).

*Yours sincerely,*

*Caroline*

CAROLINE SLOCOCK

Alan Ring, Esq.,  
Department of the Environment



①  
PRIME MINISTER

LITTER

Since you saw papers over the weekend, the attached letters from the Secretary of State for Transport and the Home Secretary have arrived.

Although in favour of removing Crown immunity for litter offences in general, both Mr Parkinson and Mr Waddington are seeking exemption as follows:

- for the inside Crown buildings but not for Crown land open to air (with certain exceptions eg prisons);

- for motorways: Mr Parkinson argues that the dangers and inconvenience of clearing motorways make it impossible to meet the standards in the new Code - which lay down standards in terms of visual appearance rather than frequency of litter clearance (as in the motorways own voluntary code).

On the latter point, surely it would be possible to draft the legislation/code of practice so as to place a binding duty on the Crown to maintain the motorways litter free which also recognises the special circumstances they present?

The Home Secretary's letter also expresses profound doubts about the use of police to enforce spot fines for litter offences. I have already recorded your concern that an effective solution to the problem of spot-fining should be found. You do not need to comment further on this point unless you wish to.

Do you agree:

- that the inside of Crown buildings should have no litter duty placed on them? *Yes*

- with Mr Parkinson's wish to exempt motorways from a binding duty? *No - the motorways are a national highway - must be cleared.*

- or would you prefer that there should be a duty in the legislation in respect of motorways but one that recognises the special circumstances? *Yes*

- to note Mr Waddington's points on enforcement but not to comment on them? *Yes*

*CS*

Caroline Slocock

20 November 1989





THE DEPARTMENT  
OF TRANSPORT



CCAS

FROM THE SECRETARY OF STATE

2 MARSHAM STREET LONDON SW1P 3EB  
TELEPHONE 01-276 3000

The Rt Hon Chris Patten MP  
Secretary of State for the Environment  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

My Ref:

Your Ref:

*Prime Minister*  
*Do you agree that*  
*motorways should*  
*be exempt from*  
*a duty otherwise*  
*placed on the Crown?*

*Dear Chris,*

*408*  
*20/11*

20 NOV 1989

LITTER

*file with 14*

Thank you for sending me a copy of your letter of 13 November to Geoffrey Howe, seeking colleagues' agreement to a number of changes to our legislative proposals for litter.

I accept that the new litter-clearing duty and associated provisions should, in general, apply to the Crown. But the special problems of dealing with litter on motorways argue strongly for them to be exempt from the new duty. Collecting litter on motorways is a particularly dangerous business for those who do it and for traffic, and it often requires lanes to be coned off; for example, to deal with central reserves. Furthermore, lane closures to deal with litter have to be co-ordinated with other maintenance work if traffic congestion is to be kept to a minimum and adequate safety preserved. Therefore, it is important for us to retain complete control over when and where litter clearance is carried out. I should add that we already have a published code of practice that covers litter clearance on motorways, and I am reviewing that to see if we can improve standards further on those sections of motorway where litter is a problem.

Our code of practice prescribes standards in terms of frequencies for litter clearance. The code envisaged under the new statutory duty will prescribe standards in terms of visual appearance and the proportion of time that one might expect a certain level of appearance to be maintained. This will require action to clear litter to be taken promptly whenever visual appearance drops below the prescribed standard. That approach could not be adopted for motorways without either the risk of additional costly delays to traffic or frequent references to the courts of litter on motorways. My aim is to keep motorways clear of litter without those unnecessary risks.

All-purpose trunk roads will, I presume, automatically be excluded from the Crown duty, because the Bill is to place responsibility for clearing litter from these roads solely on District and Borough Councils.

As regards the proposal to place an obligation on commercial frontagers to deal with litter on the pavement outside their premises, I have no objection, provided we avoid any confusion arising between that obligation and the new duty we are placing on Districts and Boroughs.

I am copying this to the Prime Minister, to other colleagues on "H", Tom King, the Lord Chancellor, the Attorney General and to Sir Robin Butler.

Yours truly,  
Cecil

CECIL PARKINSON



Env. Affairs - letter.





Ministry of Agriculture, Fisheries and Food  
Whitehall Place, London SW1A 2HH

*get it*  
Prime Minister?  
To note - I have put previous papers in an ed. letter box.

*089*  
*17/11*

**From the Minister**

The Rt Hon Chris Patten MP  
Secretary of State for the Environment  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 3EB

? 18 November 1989

*Dear Chris,*

*mt*

**LITTER**

Thank you for sending me a copy of your letter of 13 November to Sir Geoffrey Howe which invited colleagues to agree to certain adjustments to the proposals for new legislation on litter.

*will obtain if required*

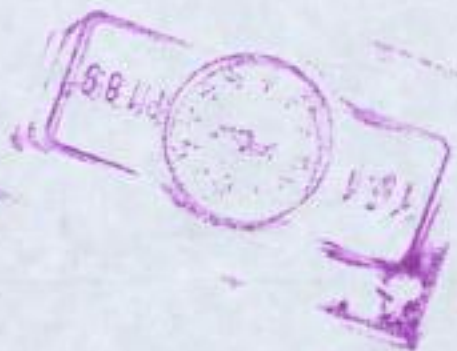
My main interest here concerns the proposed extension of local authority powers to issue "Litter Abatement Notices" to include commercial frontagers and the enabling power to place a duty on fast food establishments. David Maclean indicated at the last Ministerial Group meeting on litter that we were in favour of measures of this sort and I am happy for you to include such powers in the Environmental Protection Bill. I am also content with the other proposals set out in your letter.

I am copying this letter to the Prime Minister, to Geoffrey Howe and other members of H, Tom King, Patrick Mayhew and to Sir Robin Butler.

*Yours ever*  
*John*  
JOHN GUMMER



EW AP - letter



~~CCPS~~

CONFIDENTIAL



QUEEN ANNE'S GATE LONDON SW1H 9AT

17 November 1989

Dear Secretary of State

*attached - 72 M P.  
will obtain if  
required.*

Thank you for copying to me your letter of 13 November to Geoffrey Howe. You put forward two proposals which are of interest to me: the extension of police powers and the removal of Crown immunity.

Police powers

You propose that officials should explore further the possibility of police officers having the power to issue fixed penalty notices for littering. You thought this would be helpful in view of the lack of power for local authority officers to demand an offender's name and address. You also suggested that it might lessen the enforcement burden on the police.

I note that a number of respondents have pointed to potential enforcement problems if there is no power to demand an offender's name and address. However the evidence gathered during the first few months of the Westminster experiment does not support this view. In practice there were very few cases where it was necessary to issue fixed penalty notices at all, and it appears that local authority officers did not find it necessary to involve the police. Your consultation document correctly underlines the fact that education and persuasion rather than punishment are the aims of the scheme, and this policy is best served, in my view, by leaving primary enforcement to local authorities.

I cannot accept, either, the argument that giving the police power to issue fixed penalty notices would lessen the burden on them. It is not clear to me that fewer cases in total would reach the courts each year, since fixed penalty notices are likely to be issued for offences which at present are largely

/unenforced and

The Rt Hon Christopher Patten  
Secretary of State for the Environment  
2 Marsham Street  
LONDON, SW1P 3EB



CONFIDENTIAL



CONFIDENTIAL

2.

unenforced and which therefore do not at present involve the police in work. My fear is that if the police are given the power to issue fixed penalty notices they would come under pressure from some local authorities to become involved in dealing with offenders whom they would currently regard as very low priority, and for whom they already have adequate power, short of prosecution, if they do think it necessary to take action - for instance, warning them verbally or possibly issuing a formal caution. In my view enforcement of these minor, essentially regulatory offences must rest with the local authorities, and I hope you can agree to drop this proposal.

You also propose the waiving of Crown Immunity for Crown land to which the public has access because the Crown should be seen to be under the same obligations as other bodies. As far as the interior of buildings is concerned, the Crown does not, by and large, suffer the litter problems of railway stations and airports, and no such obligation is being placed on, say, banks and private sector office buildings, which are similar in function to many Crown buildings. In addition, it may be impracticable to define simply which areas are excluded. In this building, and no doubt in similar buildings in London, the public have regular access to the foyer, and occasional access to most officers, including my own. There are, however, some areas from which the public are excluded. I do not believe, therefore, that the waiving of Crown Immunity in respect of Crown land not open to the air is either necessary or practicable.

I would, however, have no objection to the waiving of Crown Immunity in respect of Crown land open to the air, although some important exclusions will be necessary in relation to prisons and to premises occupied by the security and intelligence services. I understand that our officials are discussing these matters, and I would wish to be assured that they have been fully resolved before the Bill goes forward.

Copies of this letter go to the recipients of yours.



*Sera Denk*  
(Approved by the Home Secretary  
and signed in his absence)

CONFIDENTIAL



# dti

the department for Enterprise

*CCP*

The Rt. Hon. Nicholas Ridley MP  
Secretary of State for Trade and Industry

The Rt Hon Chris Patten MP  
Secretary of State for  
The Environment  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 2EP

Department of  
Trade and Industry

1-19 Victoria Street  
London SW1H 0ET

Enquiries  
01-215 5000

Telex 8811074/5 DTHQ G  
Fax 01-222 2629

*Prime Minister*  
*You may have seen previous*  
*papers in an earlier*  
*box.*

*Mr Ridley wants to*  
*modify the proposals*  
*for commercial frontages*  
*to avoid singling*  
*out fast food outlets*  
*and to ensure a*  
*simpler set of rules.*

*Content with what*  
*he proposes?*  
*DB*

*Very much*  
*in favour*  
*nt*  
*17/11*

Direct line  
Our ref  
Your ref  
Date

215 5422  
PE4AFW

17 November 1989

*See Secretary of State*

## LITTER

I have seen a copy of your letter of 13 November to Geoffrey Howe inviting comments on your latest proposals on litter.

I am glad to see my proposals for the introduction of tougher measures against litter being worked up. Specifically, I endorse your proposals on the limitation of Crown Immunity and on powers to operate fixed penalty schemes although I hope that the proposed level of the penalty, which seems very low, could also be the subject of further discussion.

You will know from past correspondence both that my Department and I previously have had reservations about the extension of a duty to keep land clean to owners of private land and to commercial frontagers.

On reflection, I accept, in principle, that there is a case for enabling Local Authorities to issue Litter Abatement Notices to private owners in certain circumstances. But I remain concerned about the risk of a proliferation of local rules and uneven enforcement. This risk would be much reduced if the kind of areas to be subject to these powers could be tightly defined and designated in Regulations. The businesses most likely to be affected, such as the national retail chains, would then know exactly where they stood and would be more likely to build preventive procedures into their corporate strategies.

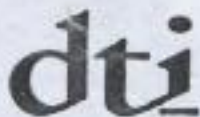
I can also accept your proposal to enable Local Authorities to issue Litter Abatement Notices to commercial frontagers.

Your proposals concerning fast food restaurants are more difficult and I suspect will generate a number of anomalies and problems of definition. Sweet shops for example can also be a major source of litter. The threat of a Litter Abatement



Recycled Paper





the department for Enterprise



Notice would of course bear most heavily on those frontagers who generate most litter and may therefore be sufficient to persuade the fast food restaurants to take voluntary action.

I would not object to the inclusion in the Bill of a power for you to place some kind of duty on certain classes of frontager. However, I believe that we should not single out fast food restaurants in the Bill. I would much prefer that we should take a reserve power for you to act against any class of frontager that is associated with a serious litter problem and has generally failed to respond to the threat of Litter Abatement Notices. The details of the duty will require further careful thought. Above all, the duty must be enforceable.

I am copying this letter to recipients of yours.

*Yours sincerely*

*Ja Stocart.*

(Approved by the Secretary of State  
and signed in his absence)



Recycled Paper





Flag B ~~CCF~~  
SCOTTISH OFFICE  
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Sir Geoffrey Howe QC MP  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON SW1

16<sup>th</sup> November 1989

Dear Lord President,

*See with CAS?*

**LITTER**

Chris Patten copied to me his letter of 13 November setting out his proposals on litter for the Environmental Protection Bill.

I have undertaken comparable consultations in Scotland and I am pleased to report that the outcome is generally consistent with the thinking in his letter. I am accordingly content for the firm proposals canvassed in our respective consultation papers to be implemented as suggested by Chris and, in particular, I support the extension of the duty to keep land clear of litter to schools, colleges and institutions of higher education.

I agree wholeheartedly that we need to adopt a more defensible stance on Crown immunity and the solution proposed in Chris's letter seems to provide a fair and intelligent means of proceeding. I am also content with the enabling provisions intended for commercial frontagers. I look forward to my officials being involved in consideration of the detail which will appear in due course in regulations.

However I feel that the implications of extending the role of the Police into the area of issuing fixed penalty notices for littering needs to be explored fully. While I am not opposed to the discussions which you suggest on the matter, I think that we have to be realistic about enforcement. A truly effective system would be extremely demanding in terms of manpower. I think that we should seek to maximise the deterrent effect of our changes and this leads me to suggest that the fixed penalty of £10 may be pitched too low. A recurrent comment from Scottish respondents to the proposal to increase the maximum fine under the Litter Act from £400 to £1000 was that such an increase was largely irrelevant because the courts tended to impose much lighter fines - the average in Scotland is £35. Pegging the fixed penalty at £10 does nothing to raise the threshold of fines imposed by the courts and arguably does not give quite the right signals as to the serious view we take of littering. I understand that the fixed penalty for parking offences is to be increased to £16 from April 1990 and I believe that this would be a more appropriate level for the fixed penalty for littering. I



appreciate that time is very short but I would hope that, unless other recipients object, £16 should be fixed by the provisions on the face of the Bill.

In general, I think the provisions should apply throughout Great Britain, but there will be a number of detailed areas where some differences are required for Scotland. In particular, we think it appropriate, as for certain minor road traffic offences, to dispense with the general requirement for corroboration in our law of evidence. On the destination of fixed penalties, we propose to adhere to our usual statutory rule that the income should accrue to the authorities who finance the district courts in Scotland. But these are minor points, which will not add to the length of the Bill.

I believe that the high degree of interest elicited by the consultation paper in Scotland and the generally positive welcome for its proposals is an encouraging confirmation that the community at large wishes the Government to take more effective action in this field.

Copies of this letter go to the Prime Minister, to the other members of H Committee, Tom King, the Lord Chancellor, the Attorney General, the Lord Advocate and to Sir Robin Butler.

*Yours sincerely*

*Ken Haight*

pp. MALCOLM RIFKIND

*(Approved by the Secretary of State  
and signed in his absence)*

Flag D

LITTER

Chris Patten makes four proposals:

- local authorities to have power to issue litter abatement notices against commercial frontagers;
- an enabling power to place a frontage duty on fast food establishments;
- to extend the litter duty to the Crown;
- to explore whether the police should be able to issue fixed penalty notices for litter.

The first two of these, on frontages, are eminently sensible and reflect a widespread view emerging from the public consultation. They can be strongly supported.

The third, removal of Crown immunity, is also sensible. It was always a weakness in the Government's position that no actual duty would apply eg to public buildings. The change will demonstrate not only the Government's resolve, but also its readiness to change position in the light of consultation.

The legal aspects of removal of immunity, however, need careful consideration. Removal is also being proposed in the context of the Food Bill and NHS Reform. The Lord President has already flagged (in recent MISC 138 correspondence) the need to ensure that the various proposals on this are consistent and legally watertight. I imagine he will respond to Chris Patten in this vein, and so will the Attorney. So I suggest the Prime Minister



supports Chris Patten's proposal subject to the views of the Lord President and Attorney on how best to ensure consistency of approach across the various subject areas. This includes in particular the question of exceptions.

The fourth, powers for the police to issue fixed and penalty tickets, is potentially quite difficult. No decisions are called for at this stage however, and judgement can be reserved until further work has been done.

The main problem is that enforcement of penalties could, generally, be impossible. At present there are only fixed penalty powers for minor traffic offences and enforcement is quite easy because drivers can be pursued through the vehicle registration system. A litter fixed penalty would not benefit from this and it would be open to all and sundry to give false names and addresses. All this needs careful exploration before decisions are made.

#### Recommendation

The Prime Minister should

- endorse the proposal to remove Crown immunity, subject to any views of the Attorney and the Lord President;
- endorse the two proposals on frontages;
- make no judgement at this stage on police powers to issue fixed penalty notices for littering, and simply look forward to seeing the results of further work on this.

*John Mills*

JOHN MILLS



PRIME MINISTER

LITTER

Mr Patten has now minuted on the response the consultation document on litter (Flag A). Responses from Mr Rifkind and Mr Baker are at Flags B and C respectively. Mr Baker's letter stresses the political importance of this issue.

John Mills gives some very helpful advice at Flag D. Broadly, the response to the consultation exercise has been constructive and positive and leads Mr Patten to want to introduce even tougher powers to control litter in front of commercial premises; and to make sure that duties are binding on the Crown. Both these seem welcome although there may yet be some details to work out.

The main problem is how to make the proposed system of spot-fining for litter offences effective. Local authorities do not have the power to demand names and addresses. It is suggested that the police might be used instead; but as John Mills points out fining for traffic offences works because people can be traced through the vehicle licensing system. Nothing of this kind is available for litter offences.

Mr Rifkind and John Mills do not see this as a simple problem. Mr Patten is proposing that the practicalities of it be discussed with the Home Office. John Mills suggests you note the difficulty but do not commit the Government to any particular solution at this stage. Mr Rifkind also suggests that the level of the spot fine should be raised to correspond to the new proposed level for traffic offences (£16 rather than £10 as is proposed).

Are you content:

- to support what is proposed on Crown immunity and for commercial premises; *Yes*
- to support a higher level of spot-fine (£16); *Yes*
- to stress the importance of finding an effective way of enforcing this whilst reserving judgement on the best approach? *Yes*

*CS*  
Caroline Slocock  
16 November 1989

*+ I hope that 'fast food' establishments includes all restaurants, cafe's etc and delicatessen shops. They all tend to put out black plastic sacks on the pavement. not*





Chancellor of the Duchy of Lancaster

The Rt Hon Chris Patten MP  
 Secretary of State for Environment  
 2 Marsham Street  
 London  
 SW1 3EB

*Flag C* *CCPS*  
 CABINET OFFICE  
 WHITEHALL, LONDON SW1A 2AS  
 Telephone: 01-270 0400

*BF Hammond  
 (John Patten  
 is submitting  
 advice)*

*15th* November 1989

*Dear Chris,*

**LITTER**

I have seen your letter of 13th November to Geoffrey Howe. The new crackdown on litter is an important political initiative. Indeed for many people our success in this will be the most evident sign of our concern for the immediate environment in which people live. I therefore support all four of your proposals.

Good and responsible shopkeepers will not object to the proposals on frontages, while those who are lazy and irresponsible should be made to improve their ways.

I am copying this letter to the Prime Minister, members of H Committee, Tom King, the Lord Chancellor, the Attorney General and to Sir Robin Butler.

*Ken Baker*

KENNETH BAKER

Gen. App - letter Pr 2.







Flag A. ~~25/11~~

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

My ref:  
Your ref:

The Rt Hon Sir Geoffrey Howe QC MP  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1

13 November 1989

Dear Lord President  
JH

**LITTER**

As you know, we issued in July a consultation paper on our proposals on litter which are to be included in the Environmental Protection Bill. The consultation period closed on 22 September and I have been considering what adjustments to our proposals are necessary in the light of the responses we have received.

There are three issues which were raised by respondents on which I would like to seek colleagues' views.

The Present Proposals

We are currently proposing to lay on local authorities a duty to ensure that all land in their beneficial occupancy or control, open to the air and to which the public have access, is kept free of litter and refuse as far as is reasonably practicable. Provision will be made at the same time for the same duty to apply to schools, CFEs, polytechnics and universities. We are also taking powers to lay this duty on certain statutory undertakers (BR, LRT, BAA and BWS most notably), and in these cases the restriction to land open to the air would not apply (in order to include stations and airports).

All those to whom the duty applies will be required to have regard to a Code of Practice on standards of cleaning. An aggrieved citizen will be able to seek from a Magistrates Court a Litter Abatement Order if they believe that the local authority (or other body) is failing to adhere to the standards of cleanliness set out in the code. Local authorities will be able to make similar orders ("Litter Abatement Notices") against certain categories of private owners where the land concerned has been designated as a "Litter Control Area" (we have in mind such areas as shopping malls and supermarket car parks).





### Crown Immunity

As this description makes clear, the duty to clear litter will affect a wide range of authorities, companies and institutions, and as a result we are coming under considerable criticism for the fact that we are currently proposing no duty on the Crown. We have so far maintained the line that the Government will be fully committed to working to the Code of Practice on Crown land even though the duty will, as is normal, not fall on Crown land because of Crown Immunity. I believe very strongly indeed that this is not good enough, since the battle against litter is one that will only be won by responsible people setting an example and making littering socially unacceptable. We must be seen to take a lead here.

I therefore propose that we should extend to the Crown the duty which we are proposing to lay on the statutory undertakers - to ensure that land in its beneficial occupancy or control, to which the public has access with or without payment by right or invitation is, so far as is practicable, kept free of litter and refuse. This would extend to the interior of Crown buildings, as in the case of the Statutory Undertakers. I accept however that there may be arguments for excluding certain categories of Crown premises from the duty, and I would therefore propose to take a power to exclude such categories (which I would nonetheless hope could be kept to a minimum) by regulation. The particular issues raised by the duty of the Crown could of course be reflected in the drafting of the Code of Practice.

I am aware of the concern felt by the Law Officers that the Crown should not expose itself to the possibility of criminal prosecution, as it would be in this case if immunity were to be waived unconditionally. I would therefore be content to adopt in this case the formula which is currently proposed in the case of the new food safety proposals; that the local authority or aggrieved individual would be able to seek from the courts a declaration of non-compliance with the duty (preceded, as in the case of a statutory undertaker or local authority, by a notice requiring the Crown occupier to deal with the litterer). This declaration would fall short of a finding of criminality and attract no criminal sanction. It would nonetheless act as a powerful incentive for the Crown to comply with the statutory requirement, if such an incentive were regrettably to be needed.

### Commercial Frontagers

The Consultation Paper discussed the possibility of placing a duty on commercial frontagers to clear litter from their frontages (even if that frontage was not in their ownership or occupation), but indicated that the Government inclined against such a duty, in particular because of problems of enforcement and the potential overlap of their duty with that of the local authority. The Paper also discussed the possibility of placing on fast-food establishments a duty similar to that currently adopted in Paris, where the outlet has to clear up any litter originating in their premises from pavements up to 30 metres away.





A large number of our respondents supported some kind of duty on commercial frontagers, and in particular on fast food establishments, as the generators of so much High Street litter. Some put forward the valid argument that this would do something to make the polluter, rather than the Community Charge payers, meet the cost of litter "pollution". They also saw it as an incentive to businesses to do what they could to reduce litter at source (for example, in terms of packaging and recycling). In the light of these comments, we have been considering how we might take effective measures against the worst offenders and ensure that they support the local authorities in their task of keeping the streets free from litter.

I have concluded that two measures are necessary. First, I propose to extend the scope of the power we are already proposing for local authorities to issue Litter Abatement Notices, to include a power for notices against commercial frontagers in respect of the area of pavement in front of their premises. (The precise scope of the power in terms of distance from the front of the premises would be a matter for separate regulations). The procedures involved will follow the model of the powers against noise in section 58 of the Control of Pollution Act, including right of appeal against the notice to a Magistrates Court.

The extension of this power would in my view provide a flexible and accurate weapon for the local authority to use against the worst offenders while avoiding any additional burden on responsible businesses. I would hope that the very existence of the power would have the effect of making the less responsible follow the example of the best.

Secondly, I would like colleagues' agreement to take a power in the Bill enabling me to place some kind of duty on fast food establishments in relation to the area in front of their premises (whether or not in their ownership) to enable us to do something about the widely perceived problems caused by these businesses. I appreciate the argument that we would want to avoid a duty on these businesses which would overlap with that of the local authority. I therefore have in mind a duty which would, for example, require the business to sweep the pavement a certain number of times a day, provide adequate litter bins, and so on. The precise definition of the group of premises to be covered and the details of the duty would of course be a matter for consultation with colleagues before regulations were made.

### Enforcement

Respondents generally support our proposal to increase the maximum fine under the Litter Act from £400 to £1000. There is also general support for our proposal that local authorities should have the power to operate a fixed penalty scheme for litterers (attracting a £10 penalty) on the lines of that currently operated by Westminster. A number of respondents have pointed out however the difficulty of enforcing fixed penalty schemes without a power for the local

*Also  
restaurants  
& delicatessen  
shops*





authority officer to demand the name and address of the offender. I accept the argument that it would be unjustified to extend this power to local authority officers in such circumstances. I would however like to explore further the possibility of police officers having the power to issue fixed penalty notices for littering, which might indeed be argued as reducing the load on the police compared with the procedures required for convictions under the Litter Act. I would be grateful to know that David Waddington is content for our officials to discuss this issue further.

#### SUMMARY

I therefore seek colleagues' agreement:

- a. to extend to the Crown the duty in relation to litter currently proposed for statutory undertakers (subject to a power to exclude certain categories of Crown Buildings and to exclude the Crown from the provision for an offence);
- b. to extend the proposed power for local authorities to issue "Litter Abatement Notices" to include commercial frontagers;
- c. to take a power to place a duty in relation to litter on fast food establishments; and
- d. to explore further the possibility of police officers having the power to issue fixed penalty notices for littering.

I am copying this to the Prime Minister, to the other members of H, Tom King, the Lord Chancellor, the Attorney General and to Sir Robin Butler. We are working to a very tight deadline for introduction of the Environmental Protection Bill. I would therefore be grateful for comments by Friday 17 November.

Yours sincerely,

CB

By CHRIS PATTEN

(Approved by the Secretary of State  
and signed in his absence)





ENV AFFAIRS. L 415  
Pt 2





CS 81 - Flag B, CEF.U

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

My ref:

Your ref:

Caroline Slocock  
Private Secretary to  
The Prime Minister  
10 Downing Street  
LONDON  
SW1A 2AA

11 July 1989

Dear Caroline,

#### LITTER

The Secretary of State has asked me to send you the enclosed final draft of a Consultation Document on litter which the Prime Minister may like to see.

The contents of the document, which has been approved by 'H' Committee, take forward the proposals discussed at the Prime Minister's meeting on litter on 10 May. As agreed at that meeting, they comprise essentially:

- i. a duty on local authorities and some statutory undertakers to keep land clean, and to have regard to a Code of Practice;
- ii. a power for local authorities to extend the same duty to occupiers of some private land;
- iii. a system of enforcement which allows both the private citizen and (in the case of other land under the duty) the local authority to take direct action if there is a breach of duty;
- iv. rationalisation of the current split between authorities of responsibilities for road cleaning; and
- v. amendments to the law regarding littering, including the introduction of the Westminster fixed penalty scheme and a higher fine.

The paper will be issued jointly with the Department of Transport and the Welsh Office. The Scottish Office are proposing to issue a paper on similar lines shortly. The Secretary of State intends to issue the document on Thursday 20 July by way of a Parliamentary Answer, followed by a press briefing.



I am sending copies of this letter to Keith Davies (Welsh Office), Neil Hoyle (Department of Transport), Len Wright (Scottish Office), and Steve Catling (Lord Presidents Office).

Yours

CEJ Bush

KATE BUSH  
Private Secretary

ACTION ON LITTER: THE GOVERNMENT'S PROPOSALS FOR LEGISLATION  
PUBLIC CONSULTATION DOCUMENT

1. This paper sets out the Government's proposals for legislation designed to improve the appearance and standards of cleanliness of public places by enabling and encouraging local authorities, other landowners and individual citizens in England and Wales to take more effective action against litter and those who drop it; and invites the comments of interested parties on these proposals. A separate consultation document setting out similar proposals for Scotland will be issued by the Scottish Office shortly.

THE LITTER PROBLEM

2. More and more people are concerned that in spite of increased efforts by many local authorities, private landowners, voluntary groups and individuals, the problem of litter shows no signs of abating. At the same time public awareness, and the demand from both local authorities and individuals for tougher action, are growing.

3. The Government shares this concern, and is determined to take the measures needed to ensure that the problem can be, and is, tackled effectively. Its view is that ultimately, the problem will only be solved by the active involvement of all individual citizens in the prevention of littering. The task of securing that involvement involves many people; the Government, for its part, will continue its own efforts and support those of others, to encourage, persuade and educate. But action is also needed to equip local authorities and others with the powers to take more effective action against litterers and litter; to set clear standards for cleanliness in public places; and to ensure that those standards are met.

ACTION AGAINST LITTERERS

4. The first requirement, in the Government's view, is to ensure that effective powers are in place to discourage litter and penalise those who drop it. Littering, an offence under the Litter Act 1983, currently attracts a maximum fine of £400. The Government considers that a clear signal is required that the offence is serious, and not to be tolerated. It proposes, therefore, to increase the maximum fine to £1,000. This would be in line with the Government's proposal to reformulate the offence so as to make explicit the more serious aspects of littering; the risks to public health or safety which result from dropping perishable or dangerous items.



These would be incorporated in Section 1(4) of the Act, which currently specifies the nature of the litter and any resulting risk of injury to persons or animals or of danger to property as matters to which the court shall have regard in sentencing persons convicted of an offence.

#### FIXED PENALTY SCHEME

5. To complement the proposed increase in the maximum fine for littering the Government proposes to enable local authorities at district/borough level to introduce fixed penalty schemes for littering within their own areas. Under such a scheme any officer of the council authorised for this purpose would have the power to issue tickets to litterers requiring payment of a fixed penalty within an agreed period, perhaps fourteen days. The penalty payable would be determined by the Secretary of State; £10 is currently proposed. Non-payment of the penalty would render the person concerned liable to prosecution under the Litter Act.

6. The model for such a scheme already exists in the City of Westminster, as provided for by the City of Westminster Act 1988. Many other local authorities are anxious to adopt this model. Following close monitoring of the Westminster scheme's first year of operation the Government concurs in Westminster's view that the scheme is a helpful and workable tool in the authority's efforts to fight litter and improve public awareness of the problem. Almost all approaches made by authorised officers resulted in the person concerned picking up the litter rather than the officer issuing a ticket. This bears out that the value of the scheme is above all one of education and persuasion, and that the demand of operating the scheme on the resources of the local authority and, ultimately, the courts is modest.

7. The Government has considered the case for retention of fines by the local authority, but does not accept that this particular instance merits a departure from the general principle that all such finer should be passed on to the Exchequer. Similarly, the Government has concluded that the Police should not be given the same power as authorised officers of the local authority to issue fixed penalty tickets, since this additional burden would effectively detract resources from serious crime prevention and detection.



## ACTION AGAINST LITTER

### DUTY ON LOCAL AUTHORITIES TO KEEP LAND CLEAN

8. The proposals outlined in paragraphs 4-7 above are designed to equip the authorities concerned to take more effective action against litter and litterers. However they are only one part of the solution. Steps are needed in parallel to ensure that when litter is dropped, it is removed promptly and effectively. As well as improving the appearance of public areas this will also directly assist in the discouragement of littering, since it is generally accepted that people are more likely to avoid littering an environment which is already tidy.

9. The prime responsibility here has to remain with local authorities. They are already under a number of duties to deal with specific aspects of the litter problem, including organising a refuse collection service, emptying and cleaning any litter bins they provide, cleaning highways, and dealing with accumulations which threaten public health. They also have certain powers to deal with litter, such as powers to deal with rubbish on privately owned land. Many local authorities are already taking their existing duties and wider responsibilities seriously, and are demonstrating what can be achieved by energetic commitment and imaginative responses. The Government wishes to encourage their efforts further. But there is a widespread perception that this commitment from local authorities is not universal. The existing powers and duties need, in the Government's view, to be brought together and rationalised in a way which strengthens and clearly defines the local authorities' role and responsibilities, and ensures that each of them reaches acceptable standards of cleanliness throughout the public areas for which they are responsible. The Government's opinion is that action on these lines, combined with the proposals described elsewhere in this document for giving local authorities the right tools for the job, will assist responsible authorities to tackle their task effectively. They will also ensure that authorities which currently neglect their obligations are no longer able to do so.

10. The Government therefore proposes to place local authorities under a duty to keep clean (formally "to clear and keep clear of litter") all land in their beneficial occupancy or control, open to the air and to which the public have access. (This duty would not apply to land outside the area of the local authority which is held solely for the purposes of a superannuation fund. Nor does the Government envisage that it should apply to school or college land in the ownership of a local education authority.) A local authority for this purpose would be a county council, a district council (both metropolitan and non-metropolitan), a



London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, and any other local authority (other than a parish or community council) designated for this purpose in regulations. A local authority would be defined for this purpose as any body able to make a rate or set a charge or levy or precept on a rating or charging authority. The intention would be to designate other local authorities such as joint authorities which are responsible for substantial areas of land to which the duty could apply.

11. The present duty to clean highways would thereby be extended to potential litter black spots such as local authority parks, playing fields, urban commons, other amenity areas, and areas such as car parks and shopping precincts in local authority control. At the same time the proposed formula for the land to be covered by the duty includes all other open areas in local authority control to which the public have access. The Government sees clear advantage in this wide definition, but the views of local authorities and others are particularly sought on whether the proposed general definition is appropriate. The duty would reinforce and clarify the responsibilities of local authorities as good housekeepers and encourage and complement the efforts of the many authorities who are already determined to take a lead and tackle the problem of litter. It would also spell out the requirement for any authorities which did not pay sufficient attention to litter clearance to do so.

#### ROADS

12. Effective street cleaning is essential because most litter is deposited on roads and pavements. In parallel with the proposed duty to keep land clean, therefore, the Government proposes a rationalisation of the current division of responsibility for road cleaning between different tiers of authority. Outside London and the metropolitan districts, responsibility for street cleaning all roads except motorways is currently shared between highway authorities and district councils in England and Wales. District councils have the major responsibility, as part of their duties for cleaning for public health and amenity purposes under the Control of Pollution Act 1974. As highway authorities, county councils and the Secretaries of State for Transport and for Wales have responsibility for cleaning their respective roads for road safety and maintenance purposes. The Secretaries of State for Transport and for Wales have sole responsibility for cleaning motorways. The problem of divided responsibilities does not arise in the case of local roads in the London boroughs and metropolitan districts because these are both highway and cleansing authorities.



13. The distinction between street cleaning for highway and amenity purposes has proved difficult to apply in practice, especially in urban areas. The overlap of responsibility is confusing to the public, is a source of friction between authorities, and blurs accountability. The Government therefore proposes that responsibility for street cleaning should be placed on one authority.

14. The Government proposes to place responsibility for street cleaning of local roads in the non-metropolitan counties solely on the district councils. They already have the major role in public cleaning and are best equipped to discharge the full responsibility. The proposed rationalisation would link in firstly with the new duty proposed in paragraph 10 above, and make it clear to the public precisely who is responsible for clearing up litter. The Audit Commission's recent report on improving highway agency arrangements recommended such a change on the grounds of efficiency and accountability. The arrangements proposed for England and Wales already apply on local roads in Scotland.

15. The Government proposes a similar rationalisation for all-purpose trunk roads. District Councils would become entirely responsible for street cleaning on such roads in their area, including cleaning for road safety and maintenance purposes.

16. Motorways are special roads where the coordination of all maintenance work involving lane closures is essential to keep traffic moving and to maintain safety standards. The Government proposes that as highway authority, the Secretaries of State for Transport and for Wales should retain responsibility for all cleaning on motorways.

17. The Government recognises that safeguards may be necessary to protect the interests of highway authorities once they no longer have a statutory responsibility for street cleaning. It proposes that non-metropolitan district councils be given a statutory duty to clean highways (except motorways) so far as the cleaning is necessary for the maintenance of the highway or the safety of traffic on them. This new duty would replace the present duty on highway authorities under Section 22(1) of the Control of Pollution Act 1974 and would be in addition to the existing duty on districts to clean in the interests of public health and amenity. The new duty (together with the proposed Code of Practice referred to in paragraph 21 below) should ensure that cleaning meets highway maintenance needs. The Government proposes a default power for highway authorities to enable them to act in an emergency to clear accumulations of litter or refuse posing a threat to road safety, and to recover the expenses reasonably incurred from the relevant non-metropolitan



district council. The proposed power would also apply to the Secretaries of State for Transport and for Wales as respects all-purpose trunk roads in England and Wales.

18. Litter collection on busy roads may need accompanying traffic management measures such as lane closures to deal with central reserves. It is important that such arrangements are coordinated with other works to minimise the disruption to traffic, and that proper safety precautions are taken. The Government proposes that County Councils and the Secretaries of State for Transport and for Wales should have the power to require the street cleaning authority to notify them of, and to approve, any arrangements for street cleaning on their respective roads which would involve traffic restrictions such as lane closures. These highway authorities would have the power to give directions to the street cleaning authority regarding the timing of the works and the necessary traffic management precautions. The Government envisages that directions would be necessary only in respect of traffic sensitive roads, and that the highway authority's requirements would be specified in advance to enable them to be taken into account in contract specifications.

19. In exceptional circumstances, it may be necessary to treat certain high-speed trunk roads as though they were motorways for the purposes of litter collection, in order to preserve adequate control over traffic management and safety. The Government proposes that the Secretaries of State for Transport and for Wales should have a power to designate high-speed trunk roads where they would assume full responsibility for all cleansing, including litter collection.

20. Careful consideration needs to be given to defining the street cleaning activities that are not related to litter and which should remain the function of highway authorities because of their importance for maintenance and road safety. The Government proposes that sweeping and cleaning of highways, the removal of litter and debris (including leaves) and the emptying of litter bins should be the responsibility of district councils outside London and the metropolitan areas. County Councils and the Secretaries of State for Transport and for Wales would remain responsible for gully emptying and the cleaning of drains and traffic signs on their roads but may choose to delegate this work to district councils. The comments of local authorities are sought on these proposals.



## CODE OF PRACTICE

21. To reinforce and clarify, in turn, the proposed duty to keep land clean the Government proposes to issue a Code of Practice on cleaning, to which local authorities will be required to have regard in discharging their duty. For the first time such a Code of Practice would stipulate the standards which local authorities would be expected to meet in cleaning the range of different types of land with which they deal, whether in terms of qualitative or perhaps quantitative standards, provision of services or facilities, method or frequency of cleaning, or a combination of these.

22. The yardstick which is needed to measure performance in carrying out the duty to keep land clean is only one aspect of the proposed Code of Practice. It will also provide a vehicle for providing guidance on best practice - in other words, for recommending the means for achieving the required standards. Both aspects of the Code will combine to provide a useful tool for local authorities, private contractors and the public alike to clarify aims, review methods, and assess performance.

23. The task of issuing the Code will fall to the Secretary of State. The Tidy Britain Group has an important role to play in its preparation, drawing in particular upon the results of its current series of pilot projects designed to inform best practice in dealing with litter in a range of different situations. Local authorities are being involved in this work, and will also have an essential contribution to make, drawing on their existing experience, particularly the experience they are now gaining in setting precise specifications under competitive tendering procedures for cleaning services.

24. Pending discussion with local authorities and others, detailed development of the draft code is at a preliminary stage, but an outline of what is proposed is annexed to this paper. (It may be appropriate for more detailed aspects to be included in a separate document, such as one in the series of Waste Management Papers issued by HM Inspectorate of Pollution.) A full draft will itself be the subject of public consultation in due course. In the meantime, early views are sought on the Code and its content, structure, aims and application.



## ENFORCEMENT

25. The proposed duty to keep clean will not be effective unless an adequate system of enforcement exists. At the same time it is an important part of the Government's strategy that individual citizens are given full opportunity for active involvement in the care of their environment. It is appropriate therefore that when a local authority appears to him to be in breach of its duty the individual citizen should have powers of redress. The Government proposes that (developing the model already provided by the Public Health Act 1936 in respect of statutory nuisance and the Control of Pollution Act 1974 in respect of noise) a person aggrieved by the failure of a local authority to discharge its duty to keep land clean should be able to apply to the Magistrates' Court for an order - a "litter abatement order" - directed to the local authority. The "person aggrieved" could be a local resident or worker or an individual representing a group such as a community organisation or voluntary body with a genuine local interest in the area concerned. The order would require the local authority to discharge its duty and/or prohibit a recurrence of the breach. Failure to observe the Code of Practice would be admissible as evidence of the breach of duty.

26. For gross or continuous neglect of its duties it is right that a local authority should be held to account, and these means would provide citizens with a simple but effective recourse. But equally it will be important to ensure that local authorities are protected from unreasonable or mischievous complaints. For example, it will be necessary in establishing a breach of duty to establish that the required standards had been breached to an unreasonable degree, or for an unreasonable period of time; and also that efforts had already been made to draw the attention of the local authority to the problem. The role of the Code of Practice in setting standards will be important here. If, by the time the matter was considered by the Court, the land in question had been cleared, the Court would be able to order the payment of the complainant's costs by the defendant.

## OTHER LAND WITH PUBLIC ACCESS: STATUTORY UNDERTAKERS

27. Litter black spots, actual or potential, are not confined to local authority land. A duty to keep land clean which fell on local authorities alone could only ever be a partial remedy. The owners of other land to which the public have access have equal responsibilities, and it is right that the same standard should be required of them as it is proposed should be required of local authorities.



28. In this light the Government proposes, firstly, that the main bodies with statutory functions which own land to which the public have access should also be given the duty to keep such land clean. As in the case of local authorities the Government considers that this proposed duty is in line with the example that public sector and other utilities must set in tackling the litter problem. At this stage it is envisaged that the bodies concerned should include the main railway, underground and other transport operators and operators of canals, ports and airports, but the Secretary of State would have power to amend the list. The duty would need in particular to include railway stations, underground stations, airports and ports, where litter problems can be severe. To ensure this the provision which would apply to local authorities (restricting the duty to land open to the air) would not apply.

29. There are some categories of statutory undertakers' land which, although the public do not have access to them, are highly visible and particularly prone to litter. In specific cases therefore the Government proposes that the Secretary of State should have power to extend the duty on statutory undertakers to such land. Currently it is envisaged that only railway embankments and those canal banks which fall into this category should be included, but there may be a case for considering additional categories of land where problems of a similar order occur. The Government recognises that in some cases the burden on the landowners concerned will not be a light one, but it believes that the severe problem of littering in some of these areas justifies such measures. The Government's proposals for tightening waste management, already announced, will be particularly relevant to tackling the problem of fly tipping on this land, which is often at the root of much of the problem.

#### PRIVATELY OCCUPIED AND OTHER LAND

30. The Government believes there is an equally strong case for the duty to keep land clean to extend to the owners or occupiers of certain other privately owned or occupied land to which the public have access. Privately-owned car parks, shopping precincts, the forecourts of commercial premises, sports grounds and that portion of shop-frontages belonging to the owner of the premises rather than to the local authority are examples. However it does not appear to be either practicable or desirable for central Government to impose a blanket duty on such land since it can never have the necessary detailed knowledge of the range of local conditions and what those conditions require as regards anti-litter measures. Instead, the Government proposes that local authorities at district/borough level should have a power to designate such privately owned or occupied land within their boundaries as



"litter control zones" as they see fit, according to local needs and circumstances. Designation would be subject to consultation. Moreover, the power to designate would be circumscribed by a definition by the Secretary of State of those categories of land to which it would apply.

31. Land owned by other bodies (such as parish or community councils or Urban Development Corporations) which fell into any category defined by the Secretary of State would be open to designation by local authorities in the same way.

32. The views of local authorities and others on which categories of land should be included in the definition are sought. The Secretary of State would have the power to add or delete categories of land to those in the definition. However, it is not the Government's intention that the duty should be capable of extension to areas to which the public have access on payment (such as historic houses, gardens and other tourist attractions). The Government also intends to exclude private grounds open to the public without admission charge such as National Trust land, private commons, moors and forests.

33. As in the case of local authorities, the proposed Code of Practice outlined in paragraphs 21-24 above would apply to all other land where the duty to keep clean applied, whether statutory undertakers, private owners' or anybody else's. It provides the flexibility to take account as necessary of the different circumstances of such land, and the different nature of the problem.

34. Similarly, the powers of enforcement described in paragraphs 25-26 above as regards local authorities would apply equally to other landowners under the duty. However, in their case the local authority itself also needs to have the means to take action where the duty is breached. The Government proposes that, following the model of the Control of Pollution Act 1974 regarding noise nuisance, the local authority at district/borough level should have the power to issue a "litter abatement notice" when it was satisfied that any other landowner was in breach of his duty to keep clean. This would require him to clear the land within a specified time and/or prohibit the recurrence of the failure to discharge the nuisance. The recipient of the notice would have a right to appeal to the Magistrates' Court - where again the Code of Practice would be admissible as evidence.

35. It is also proposed to give local authorities default powers in respect of any land which they designated as a litter control zone, enabling them in cases of non-compliance with an abatement notice to do the work of cleaning themselves and recover costs from the landowner.



#### EXTENSION OF THE LITTER ACT

36. In parallel with the proposal to extend the duty to keep clean to land owned by statutory undertakers and other owners the Government proposes to extend Section 1 of the Litter Act 1983 to all areas covered by the duty. Section 1 makes it an offence to drop and leave litter in any place open to the air to which the public have access without payment. However, since in the case of land owned by statutory undertakers and private owners the duty will (or may) bite on areas which are completely covered such as railway stations, underground stations, airports and covered shopping precincts, it is important that prosecution of offences is possible here too.

#### PARTICULAR ASPECTS OF THE LITTER PROBLEM

37. Frontages. The case has been put forward for placing owners of commercial premises under a duty to keep clean not only frontage land in their ownership but also the adjoining pavement (where the duty to clean otherwise falls on the local authority). Fast food shops in particular are sometimes seen to be prolific sources of litter which might appropriately be catered for in this way. The Government is sympathetic to the aims of this case, but has concluded that the resulting overlapping of duty on the portion of land not owned by the frontager would lead to confusion of responsibility and difficulties of enforcement which mean that the proposal is almost certainly impracticable. The proposed duty on local authorities, and their proposed power to designate the frontagers' own land, seems to answer the case more satisfactorily. The Government would at the same time strongly support voluntary action by retailers and other commercial organisations, working in cooperation with local authorities and drawing on the lessons already being learned by existing schemes of this type. Advice on the problem would be appropriate to include in the proposed Code of Practice. The Government would be interested to know if local authorities see a case for a local power to introduce a duty on frontagers to clean frontages beyond land in their ownership.

38. The Government would also be interested to know if, in the case of fast food shops, local authorities see a case for following a model recently adopted in Paris. This scheme would require fast food outlets to clear up any litter which could clearly be identified as originating in their premises from pavements within 30 metres from those premises.



39. Graffiti. Graffiti is not strictly speaking an aspect of littering. However, although the problem stems from different causes and requires different treatment, it contributes in the same way as litter to the disfigurement of towns and cities and it is appropriate to consider measures to take it within the broad context of action on litter. Befacement by graffiti is an offence under the Criminal Damage Act 1971. The enforcement of that Act, education and community involvement are the right ways to tackle the problem at source. There are already signs that community involvement can be successful in preventing the problem as well as treating it. The Government has considered the case for tougher action to deal with the problem of graffiti once it has occurred. It will include advice on best methods of graffiti removal in the proposed Code of Practice. It has however rejected the idea of placing property owners under a duty to clean up graffiti, since that would make an offender of the victim and in many cases costly redecoration is the only solution. There is, in the Government's view, a stronger case for extending the proposed duty on local authorities to keep land clean to include cleaning up graffiti in public places, but although experience in removing graffiti is growing and technology improving, such a duty would still be very costly to carry out until effective and safe technology for removing the full range of different types of graffiti was at their disposal. The Government therefore proposes to take a reserve power to require local authorities to remove graffiti in public places, but does not intend to bring the duty into force until the necessary technology is fully proven and the financial implications are clearer.

40. Dog faeces. Local authorities already have express powers to make byelaws to prevent dog fouling; to ban dogs from certain areas; and to require owners to clean up after their dogs in certain areas. Offences attract fines up to £100. Most local authorities do have byelaws banning dogs and fouling. Cleaning up faeces is to be specifically included in the duty to clean, and the Government proposes to make reference to the problem in the Code of Practice. This will in turn enable the citizen to seek redress when the local authority is not discharging its duty to clean in this respect. The Government will consult separately on proposals concerning local authority duties on the control of stray dogs and the operation of the present system for byelaws relating to dog fouling.

41. Refuse sacks. Refuse sacks on frontages and streets are unsightly and particularly if left for any time can split and spill their contents. But it is important to distinguish between sacks placed legitimately on pavements by responsible occupiers to await immediate collection by the local authority and those put out indiscriminately by irresponsible people anxious only to get refuse off their own premises. To overcome this problem the Code of Practice would include a



provision that refuse must be collected regularly and occupiers informed of the times of collection. Local authorities could then deal under the Litter Act with deposits at other times and with inadequately secured sacks.

#### THE COST OF THE PROPOSALS

42. The Government considers that the cost of the proposals outlined above, in terms of both finance and staffing, need not impose a major burden on either local authorities or any private landowners under the duty to keep land clean.

43. Local authorities are already in a position to make substantial savings in the cost of the services they provide in this field. This is particularly so as they move to competitive tendering procedures for their cleaning services under the terms of the Local Government Act 1988. Indeed the Audit Commission's paper "Preparing for Compulsory Tendering" published in January 1989 stated that competition offers the potential, both for lower costs and better services, and that experience suggests that authorities can achieve savings of 20 per cent or more in contract price, irrespective of whether work has been won by the private sector or by authorities' own workforces. A growing number of local authorities, moreover, are demonstrating that substantially increased efforts, leading to real improvements, are possible without additional resources.

44. Nor, as already noted above, do the Government's proposals impose a major new task on local authorities. Cleaning and other anti-litter measures are already an important part of their day-to-day activities, and the Government's proposals are designed to clarify rather than add to their obligations, to set clear, adequate and justifiable standards for them to work to, to provide advice and guidance on the most effective means to meet those standards, and to equip them better to deal with litterers.

45. The transfer of responsibility for street cleaning for highway purposes from highway authorities to certain local authorities will not involve any new burdens in aggregate. The main effect in the case of local roads will be to transfer expenditure from county councils to non-metropolitan district councils. In the case of all-purpose trunk roads, expenditure will be transferred from the Secretaries of State for Transport and for Wales to district and London borough councils with trunk roads in their area. Adjustments will be made as necessary to public expenditure provision.



Page C

46. Similarly, the Government's view is that no substantial new burden will fall on the business community as a whole as a result of its proposals. By no means all businesses are liable to be included in the duty. Most businesses on whom the duty to keep clean might in fact be imposed by local designation will, as a matter of commercial interest, public responsibility and good housekeeping, already be addressing the task of litter clearance. The Government considers it justifiable to expect those concerned to shoulder what should be the relatively minor additional burden of meeting defined standards of cleanliness and ensuring that public places in their ownership are kept free of litter. It will however be interested to receive evidence of a significant potential increase in costs for businesses arising out of these proposals.

SUMMARY

47. The main elements of the Government's proposals are:

(i) an increase in the maximum fine for littering under the 1983 Litter Act, from £400 to £1000;

(ii) a power for local authorities at district/borough level to introduce a fixed penalty scheme for littering, along the lines of that already operating in Westminster;

(iii) a duty on local authorities to keep clean all land in their beneficial occupancy or control, open to the air and to which the public have access.

(iv) a similar duty on certain land owners with statutory functions, but embracing some covered land (such as railway stations) and some land to which the public do not have access (such as railway embankments);

(v) a power for local authorities at district/borough level to extend by designation order a similar duty on owners of certain defined categories of land in other ownership such as car parks, shopping precincts, and forecourts of commercial premises;

(vi) rationalising street cleaning responsibilities by making non-metropolitan district councils wholly responsible for street cleaning of all roads (except motorways), with safeguards for highway authorities to preserve adequate control over traffic management and safety;



(vii) a statutory Code of Practice to be issued by the Secretary of State to which all those under the duty would be required to have regard, specifying standards of cleanliness and advising on the best means of achieving them;

(viii) a system of enforcement whereby (a) an aggrieved citizen can apply for a court order directing a local authority, or any other landowner under the duty to keep clean, to discharge the duty; (b) the local authority at district/borough level has power to issue a "litter abatement notice" requiring any other landowner under the duty to discharge that duty; and (c) having issued such a notice, the local authority has default powers to carry out the cleaning work itself, and recover costs, in cases where it designated land as at (v) above;

(ix) the extension of section 1 of the Litter Act 1983 to all areas covered by the duty to keep clean, and the widening of its scope.

48. The Government intends to introduce the necessary legislation to enact these proposals at the earliest opportunity. The proposed duty to keep land clean will not however come into force until after the final version of the proposed Code of Practice (on which separate consultation is envisaged) is approved by Parliament.



LITTER: NOTE ON PROPOSED CODE OF PRACTICE

1. As explained in the Consultation Document, those under the proposed duty to keep land clean - whether local authorities, statutory undertakers, or private owners or occupiers - would be required to have regard to a Code of Practice issued by the Secretary of State. The Code would be admissible in evidence in any court proceedings regarding the duty.

2. The following paragraphs describe the structure and content envisaged for the Code. At this stage the description, and the specific examples given, are offered as illustrations only.

STANDARDS OF CLEANLINESS

3. The kernel of the Code would be a description of the expected standards of cleanliness for land where the duty applied. A number of levels of cleanliness would be described in simple terms (and perhaps illustrated by photograph) ranging from absence of all litter to heavy littering. The Code would also describe a number of different categories of land, and for each category would state which levels of cleanliness were acceptable, and for how long.

4. For example, on land such as town centres, main shopping areas and main transport centres the highest level of cleanliness would be required for, say, at least 75% of the time. Lower levels of cleanliness would have to be rectified within specified periods of time. The lower the level of cleanliness, the shorter the period of time. But the same standards of cleanliness are not expected to apply universally. Different sets of levels of cleanliness and of times over which they would be acceptable would be specified for other categories of land, such as residential areas, parks, and suburban transport centres.

5. An indication would also be given of the minimum size of sample area over which achievement or otherwise of the cleanliness standards could be judged.

#### CLEANING PRACTICES

6. The Code would describe a number of recommended cleaning practices which those under the duty could be expected to use in achieving the required standards of cleanliness. Not all practices would necessarily apply to all those under the duty, or in all circumstances. Although there would be no legal requirement to follow the practices recommended in this part of the Code, a court would be entitled to have regard to any failure to do so in considering a case of alleged breach of duty, in determining whether there had been such a breach of duty. Any person under the duty would need to satisfy himself, and ultimately a court, that his own procedures achieved the results which the Code's recommended practices sought to achieve.

7. Recommended practices might include items such as the preparation and publication of cleaning and litter removal programmes; adequate performance monitoring; and special arrangements for particular types and sources of litter and related problems (such as markets, fast food shops, and dog faeces).

#### ADVISORY ELEMENTS

8. The Code would also provide a vehicle for offering advice on wider aspects of litter control. Those under the duty would not be required or expected to have specific regard to this advice in discharging their duty; but local authorities and others might wish to consider these wider aspects in pursuance of their litter control strategy. Matters such as design against litter and graffiti, community involvement and education could be covered in this way.



ENV Affairs: Letter  
A2

11 JUL 1988

Kle - I have  
spoken to Mr  
Ingham  
A community  
(see Bernard's note, is a good  
idea)

2

PRIME MINISTER

cc Mr Ingham

LITTER

I attach a note from Bernard about litter which sets out some radical solutions for tackling the problem. The recently published consultation document on Litter does cover some of these points. As you will recall, it proposes that in addition to the obligation placed on local authorities to clean up litter:

- a similar duty should be placed on the operators of main railways, underground and other transport and operators of canals, ports and airports; and that this should apply to all their land to which the public have access;

- that the Secretary of State or local authorities should be able to extend the duty to owners of certain categories of land where there may be a significant litter problem - eg to railway embankments, canal banks, the forecourts of commercial premises, shopping precincts, shop-frontages;

- that fast food shops should be obliged to clear up any litter from their premises within 30 metres of the premises;

- that the local authority might be given the power to "spot fine" those who litter;

- that individuals could take out a "litter abatement notice" against all those bodies (not just local authorities) which have such a duty placed on them.

CAS

Caroline Slocock

1 September 1989



PRIME MINISTER

LITTER

I have just returned from a holiday in the Rockies of the United States to a Britain which looks even untidier than when I left it.

I doubt whether the USA can teach us much about planning; ribbon development; basic housing standards; or removal of dereliction.

But there is no doubt that it is generally a much tidier country than Britain, except around Indian reservations. This also goes for its towns and cities. An anti-litter culture is pursued and throughout my tour of Wyoming, Idaho, Utah, Arizona and Colorado it was made abundantly clear that making litter is an offence.

To return to Gatwick, via rail to Purley through Redhill, and then to see Purley's streets at 10am, was a depressing and shaming sight.

It prompted these thoughts:

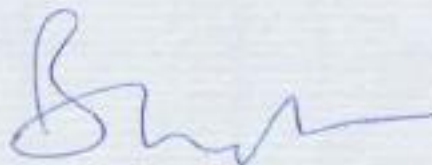
- the anti-litter content of the forthcoming Green Bill seems likely to be ineffective if all it does is render local authorities liable to prosecution.
- responsibility must be put on owners of land and frontages; it must be made an offence for owners of land and of frontages to fail to keep them clean (as distinct necessarily from clearing snow).
- since traffic wardens are responsible in effect for preventing car owners from littering urban areas, could we not extend their duties to handing out summonses for causing litter?

- it is not enough to keep roads and motorways clean; we also need land adjacent to railways kept clean. The short trip from Gatwick to Purley gives any visitor to Britain a bad impression of our tidyness and cleanliness. I am tempted to suggest that if British Rail alone kept its land clean Britain would be a much tidier place. But the responsibility goes much wider to every owner and/or occupier of property. Is it not possible to have two mutually reinforcing recourses to legal action:

- for individuals to bring summonses against the local authority for failure to discharge its responsibilities
- for the local authority to summons individuals for their failure to keep the place tidy?

I should add that in Denver extremely useful and valuable work had been found for the scarcely employable, educationally subnormal etc under the banner of an artisans' community corps. They kept the main 16th Street shopping precinct clean and washed by being there on the spot with brushes and pans. Surely the time has arrived when the unemployed in the UK should be required, as a condition of receiving unemployment benefit, to report to the local authority for cleaning duties. It should surely also be mandatory to require as many criminal offenders as possible to be employed on street and open space cleaning, and on the removal of graffiti.

Finally, there is one aspect of fly tipping which should not be overlooked - namely the disgraceful practice of people dumping their waste in rural areas. The North Downs are too much of a mess of old mattresses and household rubbish. Is it possible to create a separate offence of depositing litter or rubbish in rural areas - with very heavy penalties for those caught and for local authorities which do not clear it up?



BERNARD INGHAM  
September 1, 1989





DEPARTMENT OF THE ENVIRONMENT

2 MARSHAM STREET LONDON SW1P 3EB

01 276 3000

My ref.

Your ref.

1 AUG 1989

Priscilla

Rec'd  
4/8

Dear Colleague,

I am writing to you to set out the Government's proposals for dealing with the serious problem of litter. These have been set out in a consultation paper on July 20.

Litter has become a growing problem in all parts of the country. We have to change public attitudes to transform this unacceptable situation. This must start in the home and at school. Children need to be taught from an early age that dropping litter is selfish, anti-social and unacceptable. They need to develop a sense of pride in playing their part in creating a clean environment. This will only happen, of course, if they are set a good example by adults.

The Government proposes to demonstrate the seriousness with which it takes the problem by increasing significantly the maximum fine for dropping litter from £400 to £1,000. In addition we intend to give local authorities the power to introduce fixed penalties for litter louts on the lines already introduced by Westminster City Council.

The Government believes that an important short term need is to establish clearly who has the duty to keep public areas clean. In our view this must be the owner of the land - which in many areas will be the local authority. So we intend to give this duty to local authorities and others in our forthcoming Environment Protection Bill.

Other owners of land to which the public have access - for instance statutory undertakers - would also be covered by this new duty. In addition local authorities would have the power to designate litter control zones in which litter could be removed by the authority at the expense of the landowner in the event of his defaulting on his duty.

On its own this will not be enough. There needs to be a clear method of enforcing the duty. We believe that the public should have the right to take their local authority to the magistrates court if it is not carrying out its statutory responsibilities. For this purpose we intend to introduce a statutory code of practice giving guidance to local authorities on how they should fulfil their responsibilities. The Courts would be able to act if they failed to have regard to the advice in the Code. We will, of course, consult interested parties fully about the details to ensure that it is a workable, effective document.

There is no reason why this new duty should result in large extra expenditure by local authorities. Indeed competitive tendering offers the possibility of local authorities making significant savings whilst ensuring that their duty to the public is properly carried out.

I hope this letter is a helpful summary of our proposals. If you wish to receive a copy of the full consultation document you should write to Mr Graham Cory in room A227, 43 Marsham Street, London SW1P 3PY.

*Yours ever*

*Virginia*



PRIME MINISTER <sup>①</sup>

LITTER

The Secretary of State for the Environment has asked whether you might be prepared to offer a quote for the press conference which he proposes to have on Thursday, following a written PQ.

DOE have sent over the attached draft message, which seems rather too long to me. I suggest the following:

"Earlier this year, I said that the Government was "declaring war on litter" but that our laws were not yet equal to the task. These proposals will ensure that the Government, local authorities and above all the active citizen will have the powers they need to wage that war and to win it."

Are you content with the above?

CBS

Caroline Slocock

18 July 1989

~~MS~~

I prefer the  
longer version  
overpage. - I think

~~MS~~

MS



R18/7

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-276 3000

My ref:

Your ref:

Caroline Slocock  
Private Secretary to  
The Prime Minister  
10 Downing Street  
LONDON  
SW1A 2AA

18 July 1989

Dear Caroline,

**LITTER: ANNOUNCEMENT OF CONSULTATION DOCUMENT**

As you know, my Secretary of State intends to announce on Thursday, by means of a written PQ, the Government's proposals for tackling litter. This occasion will be the launch of our consultation document on litter, "Action on litter; the Government's proposals for legislation", which the Prime Minister has seen.

My Secretary of State intends to hold a press conference on Thursday afternoon at which he will be supported by Mrs Bottomley. Mr Bottomley will also be present to cover the Department of Transport's interests.

This is a "good news" announcement and, given the importance the Prime Minister attaches to tackling litter, my Secretary of State wonders whether the Prime Minister would be prepared to offer a quote which could be used at the launch on Thursday. I attach a suggested message and would be grateful to know as soon as possible whether the Prime Minister is content to provide a quote and if so the terms of it.

Yours

CES Bush

KATE BUSH  
Private Secretary



SUGGESTED MESSAGE FROM PRIME MINISTER FOR LAUNCH OF LITTER CONSULTATION  
DOCUMENT

A large and ever-growing number of people are angry at the way our beautiful country is being despoiled by the inconsiderate behaviour of those who drop litter. I share their determination that something must be done. A litter-strewn environment can no longer be tolerated.

People want effective action

- against litter
- against those who drop it
- against those who fail in the task of clearing it up.

The Government's proposals are timely. They will ensure that such action is taken. A growing number of local authorities and others are attacking the problem with increasing vigour. Our proposals will provide the framework within which everyone can work towards a cleaner Britain.

*Agreed mb*

FILE

CS



10 DOWNING STREET

LONDON SW1A 2AA

*From the Private Secretary*

19 July 1989

*Dear Kate,*

**LITTER: ANNOUNCEMENT OF CONSULTATION DOCUMENT**

Thank you for your letter of 18 July asking whether the Prime Minister might be prepared to offer a quotation which could be used at the launch on Thursday.

The Prime Minister is pleased to be able to do so and has agreed the message attached to your letter, which I return for ease of reference.

*Yours sincerely,  
Caroline Sloccock*

CAROLINE SLOCOCK

Miss Kate Bush  
Department of Environment

KK





10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

13 July 1989

Dear Kate,

LITTER

The Prime Minister was grateful to see the draft consultation document on litter and agrees to it being issued subject to the following points:

- she considers that it ought to contain a strong statement of the Government's own determination to set an example and to follow the Code of Practice, notwithstanding crown immunity;
- she feels strongly that school and college land should not be excluded from the duty placed on local authorities. This exemption would exclude a sizeable part of all open land in most districts and would create pressure for other major exemptions. She also thinks it would send the wrong signals to children and students;
- she would like the document to make it clear that the Government are reviewing the adequacy of the current model bye-laws on dog-fouling and, although specific consultation will follow, to welcome any comments;
- she suggests a slight modification to paragraph 25 to make clear the intention to ensure a reasonably wide definition of a "person aggrieved" so that people will be able to take action against litter more generally in their locality and not just where litter poses a direct and personal health risk. It will be important to avoid any danger of enforcement failing owing to the courts adopting a narrow construction of the locus standi.

I am sending copies of this to Peter Storr (Home Office), Keith Davies (Welsh Office), Neil Hoyle (Department of Transport), Len Wright (Scottish Office) and Steve Catling (Lord President's Office).

Yours sincerely,  
Caroline Slocock

CAROLINE SLOCOCK

Ms. Kate Bush  
Department of Environment

KB



10 DOWNING STREET  
LONDON SW1A 2AA

Paul Grice Esq  
Private Secretary to  
Mrs Virginia Bottomley MP  
Department of the Environment  
2 Marsham Street  
LONDON SW1

*Caroline Brooker*  
You may care to see. I  
will let you have advice  
for the PM on certain key  
points (not mentioned here)  
presently.

*John Mills*  
12/7.

12 July 1989

*Dear Paul,*

LITTER

Thank you for the copy of the final draft of the consultation document. I attach various comments and suggestions on this which you may like to feed in: these are essentially points of detail, but some nevertheless seem quite significant to me.

Two other points. First, nothing is said about the future of s.4 of the 1983 Act (preparation of litter plans). This has never been brought into force, but I imagine the Government will be asked if they intend to repeal it. Second, nothing is said, even in passing, about the Government's obligations in respect of its own property. This could of itself give rise to controversy but perhaps more important is the position of Government as a landowner in a local authority's area. Notwithstanding Crown Immunity, I would have thought it valuable to make clear in the document the Government's own intentions to redouble efforts against litter on its own territory.

*Yours ever,*  
*John*

JOHN MILLS



COMMENTS ON DRAFT CONSULTATION DOCUMENT

Para 3 et seq: 'Government' should be plural throughout

Para 5: Is it the case that liability to prosecution for non-payment of a fixed penalty arises under the Litter Act (as stated) or under the relevant local legislation (or the new legislation)?

Para 7: Para 4 says emphatically that littering is a serious offence. Yet here it is implied that the Police should not waste time on it in order to concentrate on 'serious' crime.

Para 11: The reference to 'good housekeeping' is a bit strange. Would it not be better to say ".... reinforce and clarify the existing responsibilities of local authorities under the CoP Act 1974 and encourage ....."

Para 14: The reference to 'non-metropolitan counties' unfortunately implies the continued existence of the metropolitan counties which the Government have abolished.

'Firstly' in line 4 is redundant.

Para 18: Ought there to be a specific reference to a consultative process between highway authorities and district councils before the giving of any directions? What is a "traffic-sensitive" road that sets it apart from other roads?

'County Council', here and elsewhere, is given capitals. But 'district council' is not. Lower case throughout?

Para 20: In line 2, is not 'responsibility' meant rather than 'function' (as in line 8)? The district council will by and large carry out the function.

Para 25: The second sentence is rather grandiloquent. Would it not be better to omit any reference to 'strategy' and say rather: "..... The Government consider it important that individual citizens take .... the opportunity for active involvement ..." (NB 'take', not 'are given').

Para 26: The reference to the award of costs is likely to be controversial. District councils will argue that this would increase the likelihood of frivolous cases. Given time lags in the court process, it is not unlikely that litter will have been cleared, but an order will still have value in prohibiting a future breach. Would it not be better to omit all reference to costs and leave it to the courts' discretion in the normal way.

Para 27: Is this best headed 'statutory undertakers'? Others fall into the category described - for example, the Church and the Conservators of Wimbledon Common - who are not statutory undertakers.



Para 28: The reference to 'public sector and other utilities' is obscure, to say the least. All 'utilities' will have been privatised by the time this comes into force.

Para 29: Saying that the burden on landowners might not be light conflicts with paras 42 and 46 where any major burden is explicitly denied.

'Tightening' waste management is an unclear concept.

Para 32: In the last sentence, might one not emphasise that s.1 of the Litter Act nevertheless applies?

Para 34: I imagine it will be seen as unfair that while local persons aggrieved (including landowners under the duty) can only act against local authorities through the Court, local authorities themselves would be able to act against landowners without such due process. It will be argued that equal obligations should carry equal rights. Especially having regard to the considerations in para 26, third sentence, would it not be more appropriate for the local authority equally to have to proceed via a court order?

Para 36: Is a railway platform a place with public access without payment? Arguably not, in which case s.1 would not apply: surely an unintended consequence.

Paras 37/38: The questions posed might be directed generally at all interested parties, not just local authorities.

Para 42: (The contrast with para 29 has already been noted). \*Would it not be better to put para 44 first in this section, to minimise the costs question through emphasising existing obligations.

Para 46: A reference to the consultation which must take place before designation might be useful.



①  
PRIME MINISTER

LITTER

I am sorry to bother you tonight with the draft consultation document on litter (Flag B) but DOE advise me that they face tight printing deadlines and would be grateful for a response as soon as possible. Mr Ridley plans to issue the document on 20 July by Parliamentary answer, followed by press briefing.

John Mills has given some excellent advice on the draft, which is at Flag A and in my view his recommendations to you are very sensible.

There is a good summary at Flag C which you may want to look at rather than ploughing through the whole document.

Are you content for the consultation document to be issued, subject to the four points highlighted by John Mills at the end of his minute.

CS  
Caroline Slocock  
12 July 1989

Y  
es  
not

Flag A:

CAROLINE SLOCOCK

12 July 1989

LITTER

The draft consultation document is unexceptional but covers the ground reasonably well. I have passed a number of detailed comments direct to DOE.

I would advise the Prime Minister to question three specific points in the draft, and raise one more general point.

GENERAL

The general point is that the draft says nothing about what the Government itself intends to do with regard to its own property. This must be rectified to avoid criticism that we are just putting new burdens on everyone else but not ourselves. The paper needs to make it absolutely clear

- that we intend to redouble efforts to ensure that all Government property is kept litter-free;
- and that to this end (notwithstanding Crown immunity) we shall have full regard to the Code of Practice and indeed set an example.

*Agreed*

And this needs emphasising when Ministers announce the proposals.

SPECIFIC

(i) Para 10: exclusion of school and college land from local authority litter duty

This exclusion has been inserted at DES' request on the grounds that it may conflict with the new powers given to



school governors, and discourage voluntary action by pupils.  
This is absurd;

- local authorities look after all the maintenance etc of school property anyway;
- it would exclude a sizeable part of all open land in most districts;
- it would create pressure for other major exemptions;
- most important of all, it would send totally wrong signals to children and students, as well as school governors, that school property was somehow different from the rest.

(ii) Para 25: who is a "person aggrieved"?

This is potentially very important, since the enforcement process stands or falls on the locus standi the courts give, or deny, to individual complainants.

Traditionally, the courts have construed 'person aggrieved' narrowly in public health cases. For example, a nuisance on your doorstep would create locus standi without a doubt but quite likely not if it was in the next street and you only drove past it. This is well-documented in Halsbury.

But the aim of the litter legislation is to enable people to take action relating more generally to their whole locality. It is thus important that the courts are not in any doubt about Parliament's intentions on who is a person aggrieved. I am concerned that DOE have not got this properly on board.



This is mainly for Instructions to Counsel, but it needs flagging up now with a slight modification to para 25 to indicate the intention more clearly.

(iii) Para 40: bye-laws relating to dog fouling

The paper emphasises the need to give local authorities the necessary powers to back up their litter duty. In this context the Prime Minister has already drawn attention to apparent shortcomings in the Home Office model bye-laws on dog fouling.

eg. they do not allow local authorities to fence off dogs in parks, only to exclude dogs from play areas.  
CB3

But para 40 does not give any indication of this. It just refers, rather lamely, to separate consultation on the "operation of the present system for bye-laws". That will not do. It should be said explicitly that, to ensure adequate backup powers, the Government is reviewing the model bye-laws. Although specific consultation on this will follow, comment would nevertheless be welcomed now.

Recommendations

Agree to publication of the consultation document, subject to

- adding a strong statement on the Government's own determination to set an example and follow the Code of Practice;
- removing the exclusion of school and college land from the scope of the local authority litter duty;
- making clear that the Government are reviewing the adequacy of the current model bye-laws on dog fouling;

Agreed

Agreed

Agreed

mb



Agreed  
ms

- suggesting a slight modification to para 25 to make clear the intention to ensure a reasonably wide definition of 'person aggrieved'. This is to avoid any danger of enforcement failing owing to narrow construction of locus standi by the courts. (The point then needs to be developed in Instructions to Counsel).

John Mills  
JOHN MILLS

dti

the department for Enterprise

File *epj*

The Rt. Hon. Tony Newton OBE, MP  
Chancellor of the Duchy of Lancaster and  
Minister of Trade and Industry

Rt Hon Nicholas Ridley MP  
Secretary of State for  
the Environment  
Department of the Environment  
2 Marsham Street  
LONDON  
SW1P 2EP

Department of  
Trade and Industry

1-19 Victoria Street  
London SW1H 0ET

Enquiries  
01-215 5000

Telex 8811074/5 DTHQ G  
Fax 01-222 2629

Direct line  
Our ref  
Your ref  
Date

215 5147

30 June 1989

*John Mack*

*attached*

I have seen a copy of your letter of 23 June to John Wakeham and welcome the opportunity to comment on the measures proposed in your minute for H Committee.

I am, broadly speaking, content with the measures and am pleased that the Consultation Paper comes down on the side of voluntary controls for keeping the frontages of commercial premises clean. However, given this, I am surprised at the suggestion that fast food outlets should be treated differently: the reasons for voluntary control for other shop premises are just as applicable here.

Pending the business response to the consultation I would also like to reserve my position on the proposal to give local authorities power to extend the duty to keep land clean to certain categories of private land. If such powers were to be given, I think it would be difficult to defend the maintenance of Crown Exemption in this area.

Having said this, I agree it is important to seek public views on your proposed measures and the Code of Practice as early as possible. I am keen that business is consulted widely and my officials will be happy to assist yours in preparing a list.

RC3ABV





**dti**

the department for Enterprise

I am copying this letter to the recipients of yours.

*h* *ee*  
*Tony*

TONY NEWTON

RC3ABV





CEPU  
Wan Mills

2 MARSHAM STREET  
LONDON SW1P 1EB  
01-276 3000

My ref

Your ref

The Rt Hon John Wakeham MP  
Lord President of the Council,  
Privy Council Office  
68 Whitehall  
LONDON  
SW1

23 June 1989

Dear Lord President,

#### LITTER

I am writing to seek the agreement of colleagues to a range of legislative measures designed to tackle the problem of litter and litterers. The Government is committed to urgent and decisive action on litter. My proposals take forward and build upon the plan which I announced earlier this year to place local authorities under a duty to keep land clean and have regard to a Code of Practice. I have already discussed them informally with a number of colleagues.

The attached note describes my proposals in detail. Essentially they comprise:

- (i) a duty on local authorities and some statutory undertakers to keep land clean, and to have regard to a Code of Practice;
- (ii) a power for local authorities to extend the same duty to occupiers of some private land;
- (iii) a system of enforcement which allows both the private citizen and (in the case of other land under the duty) the local authority to take direct action if there is a breach of duty;
- (iv) rationalisation of the current split between authorities of responsibilities for road cleaning; and
- (v) amendments to the law regarding littering.

My intention is to include legislation along these lines in the Environmental Protection Bill, currently scheduled for introduction early in the next session. I therefore need to issue a public consultation document on my proposals very soon; and I would be



grateful to know by close of play on Friday 30 June whether colleagues have any objections to my proceeding along the lines I propose.

/ I am copying this to members of H committee and to Sir Robin Butler.

C E J Bush

pp NICHOLAS RIDLEY

(approved by the Secretary of State and signed in his absence)

## LITTER

1. This paper seeks the agreement of 'H' colleagues to a range of proposals designed to provide the necessary legislative framework in England and Wales to our campaign against litter.

## BACKGROUND

2. The growing and unacceptable problem of litter calls for decisive action by the Government. Public perception of the problem continues to increase in line with heightened concern for environmental issues generally. In spite of more attention from some local authorities and private landowners too much of our towns, cities and countryside remains disfigured by litter.

3. Our ultimate objective is to engender sufficient civic pride to prevent litter in the first place. Campaigns and education have an important part to play. We have given strong backing to heightened activity by the Tidy Britain Group (TBG) which is improving its efforts to change attitudes and inform best practice in tackling litter. Ministers have also been promoting a range of initiatives within and between Departments and are considering what more they can do. However, this approach alone cannot be sufficient. We need to strengthen the law and its enforcement, and involve the individual citizen by offering him an opportunity to take direct action on his own account. I therefore propose to take legislative action as described below in the Environmental Protection Bill planned for introduction in the next session. This will be a fitting way for the Government to mark its support for Tidy Britain Year 1990.

## PREVENTION OF LITTERING

4. Littering is an offence under the Litter Act 1983. The maximum fine is level 3 (£400). I propose that we increase it to level 4 (£1,000). It might be argued that this higher level of fine is normally appropriate to an offence such as careless driving or other road traffic offences, which some might typify as more serious; but there is widespread feeling that an increase would be a valuable signal of the seriousness with which the Government views littering, and would better equip magistrates and the police to deal with the problem. A higher fine would also more closely reflect the high cost of cleaning up litter. Moreover, given the relatively



low average fine currently imposed (£35 in 1987), and the inconsistency between levels of fines in different areas of the country, I believe we should consider what advice to give magistrates about suitable levels of fine within the maximum. This would reinforce the efforts of the Magistrates' Association in this direction.

5. I also propose to enable local authorities to introduce fixed penalty schemes for littering similar to that already being operated successfully by Westminster under the City of Westminster Act 1988. This Act enables authorised officers of the Council to issue fixed penalty tickets (currently for £10) to anyone who drops litter and refuses to pick it up. Non-payment of the fine within 14 days makes way for prosecution under the Litter Act. The Westminster scheme has been widely supported and watched with keen interest by a number of other local authorities. Its first year of operation has convinced Westminster that the experiment has been a success. The statistics (only one £10 fine and one £40 penalty for non payment, from 727 approaches to potential offenders) bear out their view that education and persuasion rather than exemplary punishment are the primary function of the scheme, and also that the burden on the courts has been minimal. I believe a move to extend the scheme would be widely welcomed, but I do not accept the local authorities' proposals that moneys raised by fines should be retained by the authorities, or (given other priorities) that the Police should also have the power to issue tickets.

#### REMOVAL OF LITTER

6. The measures outlined above are designed to help tackle the litter problem at its source, by making more effective action against litterers possible. But further measures are needed to ensure that all local authorities also take effective action to deal with the problem once it has occurred. These measures should also improve their keenness to enforce the legislation against littering.

7. Local authorities at district level already have a range of duties and powers to deal with litter. But these are not comprehensive and many authorities are failing to achieve satisfactory standards. I propose to extend and consolidate their existing duties by placing on local authorities a duty to keep clean all land in their beneficial occupancy or control which is open to the sky and to which the public have access, including parks, playing fields, urban commons and other amenity areas, shopping precincts, car-parks etc.

## CODE OF PRACTICE

8. To provide the necessary yardstick against which performance of this duty can be measured I propose to take powers to issue a Code of Practice on cleaning and to oblige local authorities to have regard to the Code in discharging their duty. The Code will spell out the standards which local authorities will have to meet in cleaning different types of area, whether in terms of qualitative or perhaps quantitative standards of cleanliness, provision of facilities such as litter bins, method or frequency of cleaning, or some combination of these. The code will therefore be not merely a means of gauging the authorities' performance but a useful tool for them.

9. TBG will have an important input to the Code, drawing on a series of projects aimed at establishing best practice in dealing with a variety of litter problems. Local authorities themselves and the contracting industry will also have an important role, drawing in particular upon the experience they are gaining in setting specifications - with incentives and penalty clauses - under the competitive tendering procedures required by the Local Government Act 1988. I shall consult widely on drafting.

10. The Code will provide the vehicle for advice on specific litter problems such as fast food outlets, markets, and the dumping of plastic sacks on pavements. It will also cover roads in line with the rationalisation of local authorities' responsibilities proposed below. I attach at Annex A a brief summary of possible topics for inclusion in the Code, drawing on the interim results of the TBG pilot projects. It may prove appropriate for the more technical aspects to be contained in a separate document, such as an addition to the series of Waste Management Papers issued by H M Inspectorate of Pollution.

## ROADS

11. Outside London and the metropolitan districts, responsibility for cleaning all roads except motorways is divided between highway authorities (ie. County Councils and the Secretaries of State for Transport and for Wales) and district councils in England and Wales. I propose that we end the present division of responsibilities for litter on local roads in the non-metropolitan counties, and place responsibility entirely on the district councils. They already have the major role in public cleaning - including collection of litter and general refuse - and they are better equipped to discharge the full responsibility. That would link in firmly with the new duty on local authorities, and make it clear to the public precisely who is



responsible for clearing up litter on roads. The Audit Commission have recently recommended such a change on the grounds of efficiency and accountability. Similar arrangements already apply in Scotland.

12. I propose that we adopt a similar rationalisation for all-purpose trunk roads. District councils would become entirely responsible for dealing with litter, including the minor duty of litter clearance for road safety and maintenance that presently falls to Paul Channon and Peter Walker as highway authorities. By this means we should be able to stop local authorities blaming the Department of Transport and the Welsh Office for their own failure to discharge their responsibilities for litter clearance.

13. For Motorways which are classified as special roads, the co-ordination of all maintenance work involving lane closures - for example, coming off lanes to deal with litter on central reserves - is essential if the Department of Transport and the Welsh Office are to keep traffic flowing and maintain safety standards. Consequently, I propose that Paul Channon and Peter Walker retains responsibility for all cleaning on motorways, including litter clearance.

14. The new duties on district councils to clean for maintenance and safety purposes and to have regard to the proposed Code of Practice, should ensure that the standard and frequency of cleaning is sufficient for highway maintenance purposes. However, I propose that highway authorities be granted a default power to enable them to act in an emergency to clear debris posing a threat to road safety, and to recover the expenses reasonably incurred from the district council.

15. We also need to ensure that enhanced street cleaning by district councils does not disrupt traffic unnecessarily. I therefore propose that all highway authorities be given a power to require the street cleaning authority to notify them of arrangements for street cleaning involving restrictions such as traffic lane closures. Highway authorities would have the power to give directions to the street cleaning authority regarding the timing of the works and the necessary traffic management precautions. In exceptional circumstances, it may be necessary to treat certain high-speed trunk roads as if they were motorways in order to preserve adequate control over traffic management and safety. I propose that Paul Channon and Peter Walker should have reserve powers to designate such trunk roads and assume direct responsibility for litter as part of the overall management of these roads. These safeguards for highway authorities should not detract from the principle of making it clear to the public that district councils (including metropolitan ones) and London Boroughs will be responsible for litter on all roads except motorways.

## ENFORCEMENT

16. It is an important part of my proposals that individual citizens should be more directly and actively involved in the care of their local environment. I propose that the duty on local authorities to keep land clean should be open to enforcement by a citizen (either a local resident or voluntary group) aggrieved by failure of the local authority to discharge its duty. I would follow the model provided by section III of the Control of Pollution Act 1974 for dealing with noise nuisance, and empower an aggrieved individual to apply to the magistrates' court for an order directed to the local authority to discharge its duty and abate the nuisance. This is an effective, cheap and simple remedy. The evidence is that local authorities comply with such orders, though they can be fined if they do not. Failure to observe the code of practice would be admissible as evidence of the breach of duty. For gross failure to comply with the duty mandamus would still be available although it is a costly and cumbersome remedy for most defaults of this kind.

17. I recognize that once the new regime is in place (which is unlikely to be before the second half of next year at the very earliest) the system of enforcement I am proposing implies an additional burden on the courts. It is too early at this stage to estimate what that burden might be; but I do not envisage that the system should operate in such a way that recourse to the courts becomes a commonplace occurrence.

## OTHER LAND WITH PUBLIC ACCESS

18. We need to look beyond local authorities alone if we are to achieve comprehensive solutions. Many categories of land in other hands to which the public have access are habitual litter black spots, and these should be subjected to the same regime as local authority land.

19. The Crown will need to set an example and work to the Code, although Crown Exemption to the duty needs to apply because of the risk of local authorities or others making mischief. But I propose to take the power to extend the duty to keep clean land to which the public have access to land owners with statutory functions. At this stage I propose to include in the duty the main railway, underground and other transport operations, canals, ports and airports. The provision that the land should be open to the air cannot in this context apply, in order to catch railway stations, underground stations, airports etc which have to be among our principal



targets here. I should be grateful for the views of colleagues on whether the duty should apply in respect of certain areas under the control of other statutory undertakers.

20. It is important that statutory undertakers too should set a good example on litter and although my proposal will impose a new burden on some of them it should not be significant if they are already taking seriously their responsibilities to keep their property clean. I also propose that in specific areas which are highly visible and where litter problems can be severe, the duty should additionally apply to statutory undertakers' land where the public do not have access. At this stage I propose that railway embankments and canal sides only should be included (although here too I would provide for additions or deletions from this list by means of secondary legislation). In this case I recognise that the burden is potentially more significant; but the overriding need to get and keep these areas clean provides the justification. The Code of Practice will in any case reflect the particular circumstances of the problem and stipulate measures appropriate to the scale and nature of the task.

21. There is an equal case for including in the duty some categories of privately owned or occupied land where litter can be a habitual problem. I propose to enable local authorities themselves to extend the duty, by means of designation orders, to occupiers of certain other specified types of land. My intention here is to enable areas such as shopping precincts, private car parks and supermarket forecourts to be caught by the duty as local circumstances require. I am confident that most occupiers of these premises would not object to the duty, providing the regime was equitable. There would in any case be a requirement on the local authority to consult before designation. The type of land which a local authority could cover by a designation order will need to be closely defined and to be capable of amendment by means of secondary legislation; but I do not consider that it is desirable for Government itself to impose the duty directly in the primary legislation, or indeed that it would be possible to do so in a way which took the necessary account of every eventuality within the wide range of local conditions. Nor do I think it appropriate to extend the duty to land to which the public have access on payment or to private grounds open to the public without admission charge such as National Trust land, private commons, moors and forests. Finally, I have concluded that because of the risk of duplication of responsibility and difficulties of enforcement, we should not pursue the option of extending the duty on commercial frontages to the adjoining footpath.

22. Not all businesses will be affected; the decision, within the categories of land defined, lies with the local authorities. But in the case of those which are caught by the duty the additional burden should again be de minimis. They too should already be keeping their land clean, as a matter of commercial interest, public responsibility and good housekeeping. Most, to a greater or lesser degree, are. For these reasons it has not proved practicable to produce at this stage a meaningful estimate of any additional burden falling on business as a result of my proposals. It is in any event right and fair to expect those who are negligent in these matters to accept the minor burden of improving their performance.

23. The Code of Practice would apply equally - both as yardstick of performance and as helpful tool for achieving it - to statutory undertakers and those private landowners to be covered by the duty. It would provide the flexibility to ensure that the standards and practices which should apply in each particular set of circumstances are appropriate to those circumstances.

24. The system of enforcement by private citizens (paragraph 16 above) would again apply; and additionally local authorities themselves would have the power to issue abatement notices on other landowners caught by the duty. Subject to the right of appeal to the magistrates against a notice, non-compliance would be an offence. I also propose that in the case of all private land which they designated local authorities would have default powers to clean the land, and recover expenses. Finally, in line with the extension of the duty to statutory undertakers and some private land I propose to extend the Litter Act so that it becomes an offence to drop and leave litter on all land within the scope of the duty.

#### DCCS

25. Cleaning up dog faeces comes under the general duty to clean, and I have already announced that I propose to make specific references to the problem in the Code of Practice. This will complement the existing local authority powers to make byelaws concerning dogs. Colleagues have already agreed separately my proposals for changes in the law regarding the control of dogs.

#### FOOD SHOPS

26. Fast food shops are recognised as prolific sources of litter and I have examined the case for special provisions to deal with refuse and litter from them and other food shops. As noted above (paragraph 21) I do not think there is a case for a duty on owners of fast food shops to clean their frontages beyond their own



land, because of the risk of duplication of responsibility. There is scope for voluntary action here which can be covered in the Code of Practice. Hygiene and food safety aspects of food refuse are, I believe, already catered for adequately by the existing Food Hygiene Regulations, and provisions also already exist under the Public Health Act 1936 for dealing with accumulations of refuse on or off the premises which are prejudicial to health. Although advice can be included in the Code of Practice, I am not aware at present that there is a particular problem with the littering (as opposed to health) aspects of refuse from food shops. But (notwithstanding my position on frontages generally) the draft consultation paper annexed to this note invites reactions to the proposal that following a recently adopted and still largely untested French model, fast food shops might be placed under a duty to clear up litter on pavements which can be clearly identified as coming from their premises, within an area of 30 metres.

#### GRAFFITI

27. Graffiti writing is a public order offence and not strictly speaking an aspect of littering; yet it is appropriate to view it as part of the wider problem. To clean it up can be very costly (often the only resort is expensive redecoration) and it would be unjust to compel property owners to do so. Progress is nevertheless being made in developing products and techniques to deal with it. Many authorities are already making vigorous efforts and I can provide advice on measures to combat and clean up graffiti in the Code of Practice.

28. I have considered the case for placing local authorities under a duty to clean graffiti up. I have concluded that such a measure would not be justified for the time being. There seems little prospect that authorities will be equipped in the near future to clean up all graffiti satisfactorily. The technology, even if it is available, can be dangerous to operate; and there is a risk that the remedy can be as unacceptable as the problem. Under an obligation to clean graffiti, local authorities might be tempted to take the wrong measures. For the time being I believe the right approach remains the voluntary one, backed by encouragement and advice on the best means to tackle graffiti both before and after it happens. But I believe that there is a case for taking a reserve power to impose such a duty on local authorities, while making clear that implementation will be delayed until cost-effective and reliable technology is available, and I propose to proceed on this basis.

## EXPENDITURE/STAFFING/EUROPEAN MATTERS

29. Local authorities are in a position to make substantial economies in staffing and expenditure on cleaning services, particularly as they move to competitive tendering. The new duty I am proposing, moreover, is arguably a mere codification of existing duties and good practice, and is at worst requiring improved performance of them rather than imposing a new activity. On these grounds I do not see a case for offering additional resources. It would moreover be a hard task to justify any particular level of resources given the very wide range in the amount of additional work that will in practice be required of local authorities. Nevertheless if a substantial and genuine case is put forward by the authorities during public consultation, or after the introduction of the new regime, I am prepared to re-examine this point as regards provision of resources in 1991/92 (the first full year of operation for the new regime) and beyond.

30. We will need, however, to adjust the arrangements for public expenditure to reflect the proposed transfer of responsibility for street cleaning for highway purposes. County councils in England and Wales have budgetted to spend around £25m on street cleaning for highway purposes in 1989/90. Some of this expenditure would in future be incurred by non-metropolitan district councils, in addition to their expenditure on cleaning for amenity and public health purposes. The Departments plan to spend some £1.5m on the sweeping of all-purpose trunk roads in 1989/90. This expenditure would in future be incurred by those district councils and London boroughs with trunk roads in their area. Officials are examining the implications for PES and the needs assessments for local authorities.

31. There are no European Community implications.

## CONSULTATION

32. My proposals have implications not just for local authorities but for a large number of other bodies and individual citizens. I propose to issue a public consultation document in the second half of July, inviting comments by early autumn. This will enable me to include the necessary legislation in the Environmental Protection Bill, to be introduced early in the next session. I attach at Annex B a draft of the consultation paper, which spells out my proposals in more detail.



33. The drafting of and consultation on the Code of Practice will be a separate exercise, in which as explained above other bodies will have an important part to play. Although we will aim to have published a first draft by the time the Bill is introduced, it is at present impossible to predict exactly when the final version will be ready. For that reason I will provide in the Bill for the new duty and Code of Practice to come into force at the same time by commencement order.

#### CONCLUSION

34. I invite colleagues to agree the following measures:

- (a) an increase in the maximum fine for littering under the Litter Act 1983;
- (b) a power for local authorities to impose fixed penalties for littering;
- (c) a duty on local authorities to clean areas open to the sky in their beneficial occupation or control to which the public have access;
- (d) rationalising street cleaning responsibilities by making non-metropolitan district councils wholly responsible for street cleaning of all roads (except motorways), with safeguards for highway authorities to preserve adequate control over traffic management and safety;
- (e) the same duty to keep land clean on certain other landowners with statutory functions, but not limited to land open to the air and including some areas where the public do not have access;
- (f) a power for local authorities to extend the duty to certain categories of private land to which the public have access;
- (g) a power to issue Codes of Practice to which landowners within the scope of (c), (e) and (f) above must have regard;
- (h) a power for an aggrieved citizen to apply to the magistrates for an order for land within the scope of (c), (e) and (f) above to be cleaned;

(i) a power for local authorities to issue litter abatement notices in respect of land within the scope of (e) and (f), with a default power for them to do the work of cleaning themselves and recover costs in the case of land within the scope of (f);

(j) the extension of the Litter Act so that it becomes an offence to drop and leave litter on all land within the scope of (c), (e) and (f).

Secretary of State for the Environment

19 June 1989



PROPOSED CODE OF PRACTICE ON LITTER PREVENTION AND CLEANSING:  
SUMMARY OF TOPICS TO BE COVERED, BASED ON ADVICE OF TBG

1. The proposed Code of Practice will apply to local authorities in carrying out their duty to keep land clean, as well as to other landowners to be given the same duty. Both will be required to have regard to the code in discharging their duty.

2. This needs to be subject to full consultation with local authorities, contractors and others. (It may prove appropriate for the more detailed advice to be put into a separate non-statutory package).

### STANDARDS OF CLEANLINESS

3. Standards of cleanliness and tidiness for the range of different types of land covered by the duty (roads, verges and pavements; car parks; concourses and forecourts; public open spaces etc) will be specified. Standards may be defined by reference to parameters such as absence of litter, dirt and dog faeces, and visual appearance, including graffiti; and a definition of litter. Quantifiable standards such as number of litter items or weight of litter per square metre are a possibility but there are problems in defining, quantifying and evaluating these.

### METHODS OF CLEANSING

4. Guidance will be required on appropriate methods and frequency of cleansing and litter collection for the various categories of land covered by the code as well as particular targets such as litter bins, fly tipping and dog faeces. Advice will cover a wide range of specialised aspects of best practice such as synchronisation of refuse collection and litter bin emptying; recommended types of litter bins; and health aspects of particular hazards.

### DESIGN AGAINST LITTER

5. Litter control should be incorporated in design such as layout of open spaces and parks; siting and design of litter bins; and provision and management of recycling facilities.

## COMMUNITY ACTION

6. This will be a key element in the attack on litter. Local authorities in particular should involve the community in litter prevention and abatement. Recommended action may include litter-free zones; the appointment of litter officers; liaison with voluntary groups; and education and awareness training.

## ENFORCEMENT

7. Advice on enforcement should cover not only the fixed penalty scheme (numbers of enforcement officers etc) but also existing anti-litter legislation. The facilitation, by means of advice, of action by citizens to prosecute breaches of the new duty to keep clean should be mentioned in the code, but explained in detail in an advisory leaflet.



LITTER

DRAFT PUBLIC CONSULTATION DOCUMENT

(DRAFT OF 19 JUNE 1989)

1. This paper sets out the Government's proposals for legislation designed to improve the appearance and standards of cleanliness of public places by enabling and encouraging local authorities private landowners, and individual citizens in England and Wales to take more effective action against litter and those who drop it; and invites the comments of interested parties on these proposals.

THE LITTER PROBLEM

2. More and more people are concerned that in spite of increased efforts by many local authorities, private landowners, voluntary groups and individuals, the problem of litter shows no signs of abating. At the same time public awareness, and the demand from both local authorities and individuals for tougher action, are growing.

3. The Government shares this concern, and is determined to take the necessary measures to ensure that the problem can be and is effectively tackled. Its view is that ultimately, the problem will only be solved by the active involvement of all individual citizens in the prevention of littering. The task of securing that involvement involves many people; the Government, for its part, will continue its own efforts and support those of others, to encourage, persuade and educate. But action is also needed to equip local authorities and others with the powers to take more effective action against litterers and litter; to set clear standards for cleanliness in public places; and to ensure that those standards are met.

ACTION AGAINST LITTERERS

4. The first requirement, in the Government's view, is to ensure that effective powers are in place to discourage litter and penalise those who drop it. Littering, an offence under the Litter Act 1983, currently attracts a maximum fine of £400. The Government considers that a clear signal is required that the offence is serious, and not to be tolerated. It proposes therefore to increase the maximum fine to £1,000. This will better equip magistrates, the police, and indirectly local authorities and others both to deal with offenders and to discourage littering. It

will more closely represent the huge cost incurred in cleaning up litter. Magistrates may for their part wish to re-examine the level of fines they impose for littering offences within the maximum.

#### FIXED PENALTY SCHEME

5. To complement the proposed increase in the maximum fine for littering the Government proposes to enable local authorities to introduce fixed penalty schemes for littering within their own areas. Under such a scheme any officer of the council authorised for this purpose would have the power to issue tickets to litterers requiring payment of a fixed penalty within an agreed period, perhaps fourteen days. The penalty payable would be determined by the Secretary of State: £10 is currently proposed. Non-payment of the penalty would render the person concerned liable to prosecution under the Litter Act.
6. The model for such a scheme already exists in the City of Westminster, as provided for by the City of Westminster Act 1988. A number of other local authorities are anxious to follow this model. Following close monitoring of the Westminster scheme's first year of operation the Government concurs in Westminster's view that the scheme is a helpful and workable tool in the authority's efforts to fight litter and improve public awareness of the problem. Almost all approaches made by authorised officers resulted in the person concerned picking up the litter rather than the officer issuing a ticket; and this bears out that the value of the scheme is above all one of education and persuasion, as well as the fact that the demand of operating the scheme on the resources of the local authority and, ultimately, the courts is modest.
7. The Government has considered the case for retention of fines by the local authority, but does not accept that this particular instance merits a departure from the general principle that all such fines should be passed on to the Exchequer. Similarly the Government has concluded that the Police should not be given the same power as authorised officers of the local authority to issue fixed penalty tickets, since this additional burden would effectively detract resources from serious crime prevention.



## ACTION AGAINST LITTER

### DUTY ON LOCAL AUTHORITIES TO KEEP LAND CLEAN

8. The proposals outlined in paragraphs 4-7 above are designed to equip the authorities concerned to take more effective action against litter and litterers. However they are only one part of the solution. Steps are needed in parallel to ensure that when litter is dropped, it is removed promptly and effectively. As well as improving the appearance of public areas this will also directly assist in the discouragement of littering, since it is generally accepted that people are more willing to avoid littering an environment which is already tidy.
9. The prime responsibility here has to lie with local authorities. Local authorities are already under a number of duties to deal with specific aspects of the litter problem, including organising a refuse collection service, emptying and cleaning any litter bins they provide, cleaning highways, and dealing with accumulations which threaten public health. They also have certain powers to deal with litter, such as powers to deal with rubbish on privately owned land. These powers and duties need, in the Government's view, to be brought together and rationalised in a way which clearly defines the local authorities' role and responsibilities, and ensures that each of them reaches acceptable standards of cleanliness throughout the public areas for which they are responsible.
10. The Government therefore proposes to place local authorities under a duty to keep clean all land in their beneficial occupancy or control, open to the air and to which the public have access. The intention is that the present duty to clean highways would thereby be extended to potential litter black spots such as local authority parks, playing fields, urban commons, other amenity areas, and areas such as car parks and shopping precincts in local authority control. At the same time the proposed formula for the land to be covered by the duty includes all other open areas in local authority control to which the public have access. The Government sees clear advantage in this wide definition, but the views of local authorities and others are particularly sought on whether the proposed general definition is appropriate. The duty would reinforce and clarify the responsibilities of local authorities as good housekeepers and encourage and complement the efforts of the many authorities who are already determined to take the lead and tackle the problem of litter. It would also spell out the requirement for any authorities which did not pay sufficient attention to litter clearance to do so.

## ROADS

11. Effective street cleaning is essential because most litter is deposited on roads and pavements. In parallel with the proposed duty to keep land clean, therefore, the Government proposes a rationalisation of the current division of responsibility for road cleaning between different tiers of authority. Outside London and the metropolitan districts, responsibility for street cleaning all roads except motorways is currently shared between highway authorities and district councils in England and Wales. District councils have the major responsibility, as part of their duties for cleaning for public health and amenity purposes under the Control of Pollution Act 1974. As highway authorities, county councils and the Secretaries of State for Transport and for Wales have responsibility for cleaning their respective roads for road safety and maintenance purposes. The Secretaries of State for Transport and for Wales have sole responsibility for cleaning motorways. The problem of divided responsibilities does not arise in the case of local roads in the London boroughs and metropolitan districts because these are both highway and cleaning authorities.
12. The distinction between street cleaning for highway and amenity purposes has proved difficult to apply in practice, especially in urban areas. The overlap of responsibility is confusing to the public, is a source of friction between authorities, and blurs accountability. The Government therefore proposes that responsibility for street cleaning should be placed on one authority.
13. The Government proposes to place responsibility for street cleaning of local roads in the non-metropolitan counties solely on the district councils. They already have the major role in public cleaning and are best equipped to discharge the full responsibility. The proposed rationalisation would link in firstly with the new duty proposed in paragraph 10 above, and make it clear to the public precisely who is responsible for clearing up litter. The Audit Commission's recent report on improving highway agency arrangements recommended such a change on the grounds of efficiency and accountability. The arrangements proposed for England and Wales already apply on local roads in Scotland.
14. The Government proposes a similar rationalisation for all purpose trunk roads. District Councils would become entirely responsible for street cleaning on such roads in their area, including cleaning for road safety and maintenance purposes.



15. Motorways are special roads where the coordination of all maintenance work involving lane closures is essential to keep traffic moving and to maintain safety standards. The Government proposes that as highway authority, the Secretaries of State for Transport and for Wales should retain responsibility for all cleaning on motorways.

16. The Government recognises that safeguards may be necessary to protect the interests of highway authorities once they no longer have a statutory responsibility for street cleaning. It proposes that non-metropolitan district councils be given a statutory duty to clean highways (except motorways) so far as the cleaning is necessary for the maintenance of the highway or the safety of traffic on them. This new duty would replace the present duty on highway authorities under Section 22(1) of the Control of Pollution Act 1974 and would be in addition to the existing duty on districts to clean in the interests of public health and amenity. The new duty (together with the proposed Code of Practice referred to in paragraph 20 below) should ensure that cleaning meets highway maintenance needs. The Government proposes a default power for highway authorities to enable them to act in an emergency to clear accumulations of litter or refuse posing a threat to road safety, and to recover the expenses reasonably incurred from the relevant non-metropolitan district council. The proposed power would also apply to the Secretaries of State for Transport and for Wales as respects all-purpose trunk roads in England and Wales.

17. Litter collection on busy roads may need accompanying traffic management measures such as lane closures to deal with central reserves. It is important that such arrangements are coordinated with other works to minimise the disruption to traffic, and that proper safety precautions are taken. The Government proposes that County Councils and the Secretaries of State for Transport and for Wales should have the power to require the street cleaning authority to notify them of, and to approve, any arrangements for street cleaning on their respective roads which would involve traffic restrictions such as lane closures. These highway authorities would have the power to give directions to the street cleaning authority regarding the timing of the works and the necessary traffic management precautions. The Government envisages that directions would be necessary only in respect of traffic sensitive roads, and that the highway authority's requirements would be specified in advance to enable them to be taken into account in contract specifications.

18. In exceptional circumstances, it may be necessary to treat certain high-speed trunk roads as though they were motorways for the purposes of litter collection, in order to preserve adequate control over traffic management and safety. The

Government proposes that the Secretaries of State for Transport and for Wales should have a power to designate high-speed trunk roads where they would assume full responsibility for all cleansing, including litter collection.

19. Careful consideration needs to be given to defining the street cleaning activities that are not related to litter and which should remain the function of highway authorities because of their importance for maintenance and road safety. The Government proposes that sweeping and cleaning of highways, the removal of litter and debris (including leaves) and the emptying of litter bins should be the responsibility of district councils outside London and the metropolitan areas. County Councils and the Secretaries of State for Transport and for Wales would remain responsible for gully emptying and the cleaning of drains and traffic signs on their roads but may choose to delegate this work to district councils. The comments of local authorities are sought on these proposals.

#### CODE OF PRACTICE

20. To reinforce and clarify, in turn, the proposed duty to keep land clean the Government proposes to issue a Code of Practice on cleaning, to which local authorities would be required to have regard in discharging their duty. For the first time such a Code of Practice would stipulate the standards which local authorities would be expected to meet in cleaning the range of different types of land with which they deal, whether in terms of qualitative or perhaps quantitative standards, provision of services or facilities, method or frequency of cleaning, or a combination of these.

21. The yardstick which is needed to measure performance in carrying out the duty to keep land clean is only one aspect of the proposed Code of Practice. It will also provide a vehicle for providing guidance on best practice - in other words, for recommending the means for achieving the required standards of performance. Both aspects of the Code will combine to provide a useful tool for local authorities, private contractors and the public alike to clarify aims, review methods, and assess performance.

22. The task of issuing the Code will fall to the Secretary of State. However the Tidy Britain Group has an important role to play in its preparation, drawing up on the results of its current series of pilot projects designed to inform best practice in dealing with litter in a range of different situations. Local authorities are being involved in this work, and will also have an essential contribution to make.



drawing on their existing experience and particularly the experience they are now gaining in setting precise specifications etc under competitive tendering procedures for cleaning services.

23. Pending discussion with local authorities and others, detailed development of the draft code is at a preliminary stage, but an outline of what is proposed is annexed to this paper. (It may be appropriate for more detailed aspects to be included in a separate document, such as one in the series of Waste Management Papers issued by HM Inspectorate of Pollution.) A full draft will itself be the subject of public consultation in due course. In the meantime, early views are sought on the Code and its content, structure, aims and application.

#### ENFORCEMENT

24. The proposed duty to keep clean will not be effective unless an adequate system of enforcement exists. At the same time it is an important part of the Government's strategy that individual citizens are given full opportunity for active involvement in the care of their environment. It is appropriate therefore that when a local authority appears to him to be in breach of its duty the individual citizen should have powers of redress. The Government proposes that (developing the model already provided by the Public Health Act 1936 in respect of statutory nuisances and the Control of Pollution Act 1974 in respect of noise) a citizen (either a local resident or a voluntary group) aggrieved by the failure of a local authority to discharge its duty to keep land clean should be able to apply to the Magistrates' court for an order directed to the local authority to discharge its duty. Failure to observe the Code of Practice would be admissible as evidence of the breach of duty.

25. For gross or continuous neglect of its duties it is right that a local authority should be held to account, and these means would provide citizens with a simple but effective recourse. But equally it will be important to ensure that local authorities are protected from unreasonable or mischievous complaints. For example, it will be necessary in establishing a breach of duty to establish that the required standards had been breached to an unreasonable degree, or for an unreasonable period of time; and also that efforts had already been made to draw the attention of the local authority to the problem. The role of the Code of Practice in setting standards will be important here.

## OTHER LAND WITH PUBLIC ACCESS: STATUTORY UNDERTAKERS

26. Litter black spots, actual or potential, are not confined to local authority land. A duty to keep land clean which fell on local authorities alone could only ever be a partial remedy. The owners of other land to which the public have access have equal responsibilities; and it is right that the same standard should be required of them as it is proposed should be required of local authorities.

27. In this light the Government proposes, firstly, that the main landowners with statutory functions should equally be given the duty to keep clean land to which the public have access. As in the case of local authorities the Government considers that this proposed duty is in line with the example that the public sector and other utilities must set in tackling the litter problem. At this stage it is envisaged that the bodies concerned should include the main railway, underground and other transport operators and operators of canals, ports and airports, but the Secretary of State would have power to amend the list. The duty would need in particular to include railway stations, underground stations, airports and ports, where litter problems can be severe. To ensure this the provision which would apply to local authorities where the land should be open to the air would not apply to statutory undertakers.

28. There are some categories of statutory undertakers' land which, although the public do not have access to them, are highly visible and particularly prone to litter. In specific cases therefore the Government proposes that the Secretary of State should have power to extend the duty on statutory undertakers to such land. Currently it is envisaged that only railway embankments and those canal banks which fall into this category should be included, but there may be a case for considering additional categories of land where problems of a similar order occur. The Government recognises that in some cases the burden on the landowners concerned will not be a light one; but it believes that the severe problem of littering in some of these areas justifies such measures. The Government's proposals for tightening waste management, already announced, will moreover be particularly relevant to tackling the problem of fly tipping on this land, which is often at the root of such of the problem.

## PRIVATELY OCCUPIED LAND

29. The Government believes there is an equally strong case for the duty to keep land clean to extend to certain other privately owned or occupied land to which the public have access. Privately-owned car parks, shopping precincts, the forecourts of



commercial premises, sports grounds and that portion of shop-fronts belonging to the owner of the premises rather than to the local authority are examples. However it does not appear to be either practicable or desirable for central Government to impose a blanket duty on such land since it can never have the necessary detailed knowledge of the range of local conditions and what those conditions require as regards anti-litter measures. Instead, the Government proposes that local authorities should have a power to designate such privately owned or occupied land within their boundaries as "litter control zones" as they see fit, according to local needs and circumstances. Designation would be subject to consultation. The power to designate would moreover be circumscribed by a definition by the Secretary of State of those categories of land to which it would apply.

30. The views of local authorities and others on which categories of privately owned land should be included in the definition are accordingly sought. The Secretary of State would have the power to add or delete categories of land to those in the definition. However it is not the Government's intention that the duty should be capable of extension to areas to which the public have access on payment (such as historic houses, gardens and other tourist attractions). The Government also intends to exclude private grounds open to the public without admission charge such as National Trust land, private commons, moors and forests.

31. As in the case of local authorities, the proposed Code of Practice outlined in paragraphs 20-23 above would apply to all private land where the duty to keep clean applied, whether statutory undertakers' or private owners'. It provides the flexibility to take account as necessary of the different circumstances of such land, and the different nature of the problem.

32. Similarly, the powers of enforcement described in paragraphs 24-25 above as regards local authorities would apply equally to statutory undertakers and private landowners under the duty. However in the latter two cases the local authority itself also needs to have the means to take action where the duty is breached. The Government proposes that, following the model of the Control of Pollution Act 1974 as regards noise nuisance, the local authority should have the power to issue a "litter abatement notice" when it was satisfied that the landowner was in breach of his duty to keep clean, requiring him to discharge the duty within a specified time. The recipient of the notice would have a right to appeal to the magistrates' court - where again the Code of Practice would be admissible as evidence.

33. It is also proposed to give local authorities default powers in respect of any private land which they designated, enabling them in cases of non-compliance with an abatement notice to do the work of cleaning themselves and recover costs from the landowner.

#### EXTENSION OF THE LITTER ACT

34. In parallel with the proposal to extend the duty to keep clean to land owned by statutory undertakers and some private owners the Government proposes to extend to all areas covered by the duty Section 1 of the Litter Act 1983. Section 1 currently makes it an offence to drop and leave litter in any place in the open air to which the public have access without payment. However since in the case of land owned by statutory undertakers and private owners the duty will or may bite on covered areas such as railway stations, underground stations, airports and covered shopping precincts, it is important that the authorities and the landowners concerned are able at the same time to prosecute litterers in the areas concerned.

#### PARTICULAR ASPECTS OF THE LITTER PROBLEM

35. Frontages. The case has been put forward for placing owners of commercial premises under a duty to keep clean not only frontage land in their ownership but also the adjoining pavement (where the duty to clean otherwise falls on the local authority). Fast food shops in particular are seen to be prolific sources of litter which might appropriately be catered for in this way. The Government is sympathetic to the aims of this case, but has concluded that the resulting overlapping of duty on the portion of land not owned by the frontager would lead to confusion of responsibility and difficulties of enforcement which mean that the proposal is almost certainly impracticable. The proposed duty on local authorities, and their proposed power to designate the frontagers' own land, seem to answer the case more satisfactorily. The Government would at the same time strongly support voluntary action by retailers and other commercial organisations, working in cooperation with local authorities and drawing on the lessons already being learned by existing schemes of this type. Advice on the problem would be appropriate to include in the proposed Code of Practice. The Government would be interested to know if local authorities see a case for a local power to introduce a duty to clean frontages extending beyond land in their ownership.



36. The Government would also be interested to know if in the case of fast food shops local authorities see a case for following a model recently adopted in Paris. This scheme would require fast food outlets to clear up any litter on pavements within 30 metres from their premises which can clearly be identified as originating in their premises.

37. Graffiti. Graffiti is not strictly speaking an aspect of littering. Although the problem stems from different causes and requires different treatment, however, it contributes in the same way as litter to the disfigurement of towns and cities and it is appropriate to consider measures to take it within the broad context of action on litter. Defacement by graffiti is a public order offence under the Criminal Damage Act 1971. The enforcement of that Act, education and community involvement are the right way to tackle the problem at source. There are already signs that community involvement can be successful in preventing the problem as well as treating it. The Government has considered the case for tougher action to deal with the problem of graffiti once it has occurred. It will include advice on best methods of graffiti removal in the proposed Code of Practice. It has however rejected the idea of placing property owners under a duty to clean up graffiti, since that would make an offender of the victim and in many cases costly redecoration is the only solution. There is, in the Government's view, a stronger case for extending the proposed duty on local authorities to keep land clean to include cleaning up graffiti in public places; but although experience in removing graffiti is growing and technology improving, such a duty would still be very costly to carry out until effective and safe technology for removing the full range of different types of graffiti was at their disposal. The Government therefore proposes to take a reserve power to require local authorities to remove graffiti in public places, but does not intend to bring the duty into force until the necessary technology is fully proven and the financial implications are clearer.

38. Dog faeces. Local authorities already have express powers to make by-laws to prevent dog fouling (usually on pavements, verges and beaches); to ban dogs from certain areas (usually parks and children's play areas); and to require owners to clean up after their dogs. Offences attract fines up to £100. Most local authorities do have by-laws banning dogs and fouling. Cleaning up faeces is additionally included in the duty to clean, and the Government proposes to make specific references to the problem in the Code of Practice. This will in turn enable the citizen to seek redress when the local authority is not discharging its duty to clean in this respect. The Government is consulting separately on proposals concerning local authority duties on the control of stray dogs.



39. Refuse sacks. Refuse sacks on frontages and streets are unsightly and particularly if left for any time can split and spill their contents. But it is important to distinguish between sacks placed legitimately on pavements by responsible occupiers to await immediate collection by the local authority and those put out indiscriminately by irresponsible people anxious only to get refuse off their own premises. To overcome this problem the Code of Practice would include a provision that refuse must be collected regularly and occupiers informed of the times of collection. Local authorities could then deal under the Litter Act with deposits at other times and with inadequately secured sacks.

#### THE COST OF THE PROPOSALS

40. The Government considers that the cost of the proposals outlined above, in terms of both finance and staffing, need not impose a major burden on either local authorities or any private landowners under the duty to keep land clean.

41. Local authorities are already in a position to make substantial savings in the cost of the services they provide in this field. This is particularly so as they move to competitive tendering procedures for their cleaning services under the terms of the Local Government Act 1988. Indeed the Audit Commission's paper "Preparing for Compulsory Tendering" published in January 1989 stated that competition offers the potential for both lower costs and better services, and that experience suggests that authorities can achieve savings of 20 per cent or more in contract price, irrespective of whether work has been won by the private sector or by authorities' own workforces. A growing number of local authorities, moreover, are demonstrating that substantially increased efforts, leading to real improvements, are possible without additional resources.

42. Nor do the Government's proposals impose a major new task on local authorities. Cleaning and other anti-litter measures are already an important part of their day-to-day activities, and the Government's proposals are designed essentially to clarify rather than add to their obligations, to set clear, adequate and justifiable standards for them to work to, to provide advice and guidance on the most effective means to meet those standards, and to equip them better to deal with litterers.

43. The transfer of responsibility for street cleaning for highway purposes from highway authorities to certain local authorities will not involve any new burdens in aggregate. The main effect in the case of local roads will be to transfer expenditure from county councils to non-metropolitan district councils. In the case of all-purpose trunk roads, expenditure will be transferred from the Secretaries of



State for Transport and for Wales to district and London borough councils with trunk roads in their area. Adjustments will be made as necessary to public expenditure provision.

44. Similarly, the Government's view is that no substantial new burden will fall on the business community as a whole as a result of its proposals. By no means all businesses are liable to be included in the duty. Most businesses on whom the duty to keep clean might in fact be imposed by local designation will, as a matter of commercial interest, public responsibility and good housekeeping, already be addressing the task of litter clearance. The Government considers it justifiable to expect those concerned to shoulder what should be the relatively minor additional burden of meeting defined standards of cleanliness and ensuring that public places in their ownership are kept free of litter. It will however be interested to receive evidence of a significant potential increase in costs for businesses arising out of these proposals.

#### SUMMARY

45. The main elements of the Government's proposals are:

- (i) an increase in the maximum fine for littering under the 1983 Litter Act, from £400 to £1000;
- (ii) a power for local authorities to introduce a fixed penalty scheme for littering, along the lines of that already operating in Westminster;
- (iii) a duty on local authorities to keep clean all land in their beneficial occupancy or control, open to the air and to which the public have access;
- (iv) a similar duty on statutory undertakers; but embracing some covered land such as railway stations and some land to which the public do not have access;
- (v) a power for local authorities to extend by designation order a similar duty on owners of certain defined categories of private land such as car parks, shopping precincts, and forecourts of commercial premises;
- (vi) rationalising street cleaning responsibilities by making non-metropolitan district councils wholly responsible for street cleaning of all roads (except motorways), with safeguards for highway authorities to preserve adequate control over traffic management and safety;

(vii) a statutory Code of Practice to be issued by the Secretary of State, specifying required standards of cleanliness and advising on the best means of achieving them;

(viii) a system of enforcement whereby (a) an aggrieved citizen can apply for a court order directing a local authority, or other landowner under the duty to keep clean, to discharge the duty; (b) the local authority has power to issue "litter abatement notices" requiring a private landowner to discharge his duty; and (c) the local authority has default powers to carry out the cleaning work itself, and recover costs, in cases where it designated private land as at (v) above;

(ix) the extension of Section 1 of the Litter Act 1983 to all areas covered by the duty to keep clean.

46. The Government intends to introduce the necessary legislation to enact these proposals at the earliest opportunity. The proposed duty on local authorities, statutory undertakers and private landowners will not however come into force until the final version of the proposed Code of Practice, on which separate consultation is envisaged, is approved.

47. Interested parties are invited to send any views they may have on the proposals described above to [ ] by [ ]



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SUBJECT CL MASTER

a P. U.



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

12 May 1989

Dear Roger

LITTER

The Prime Minister held a meeting on Wednesday 10 May to discuss your Secretary of State's minute of 5 May and the Secretary of State for Transport's minute of 4 May about litter. Those present were your Secretary of State, the Secretaries of State for the Home Department and for Transport, the Lord President, the Attorney General, the Paymaster General, the Parliamentary Under-Secretary of State at your Department (Mrs Bottomley), John Mills (Policy Unit), Richard Wilson and Andrew Wells (Cabinet Office).

i. General

Your Secretary of State said that his minute reflected the outcome of the work commissioned at the previous meeting on 10 April. Colleagues had already agreed to his proposals to enable local authorities to introduce fixed penalty schemes for littering, and to impose a general duty on the authorities to keep their areas clean. He proposed that this duty should apply to all land in their beneficial occupancy which was open to the sky and to which the public had access. He had given further thought to the important issue of enforcement, and he now proposed that aggrieved citizens should be able to apply to the local magistrates' court for an order directing the local authority to discharge duty. This would provide a cheap and effective enforcement mechanism. He proposed a similar duty on land owners with statutory functions to keep clean areas to which the public had access. So far as other land was concerned, for instance car parks or forecourts associated with commercial premises, he proposed to enable local authorities to extend the duty by designation. This would provide a flexible system, which could be tailored to meet the circumstances of particular areas. Some types of area, such as historic houses to which the public had access on payment of a charge, would be specifically excluded. But further thought was necessary in the case of certain highly visible areas to which the public had no access, such as railway embankments. The new duties would be backed by a detailed Code of Practice. An outline was attached to his minute, but much further work

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was needed, and it would also be necessary to consult interested parties to ensure that the Code was right.

He had given further thought to the possibility of imposing a duty on commercial premises to keep their frontages clean, but he was not persuaded that this was necessary or desirable. If the premises owned the land in question then the local authority would be able to designate it under his proposals. If on the other hand the land belonged to the local authority, then the authority would have the duty to keep it clean, and a frontagers' duty would lead to confusion and lack of effective responsibility. A duty on the frontager could also give rise to a risk of civil action if, for instance, passers-by slipped on litter.

He had also considered the problem of graffiti, but felt that this had to be tackled through the existing criminal damage law: a duty on a property owner to clean off graffiti would penalise the victim, and could not be justified. He did however propose to include fouling by dogs within the new duties of cleanliness, and to cover this in the Code of Practice. Finally, he felt that it was essential that Government departments should set a good example by taking positive action to ensure that their premises were free from litter.

In discussion the following main points were made:-

- a. There had been suggestions that the Litter Act should be amended to create an absolute offence of littering, so that offenders could not evade the law by picking up litter when challenged. However it seemed unlikely that such a change would be of much practical value. The key to success in countering litter was much more effective enforcement. The new duty on local authorities and the introduction of fixed penalties for littering were the best available means for achieving that. There was also a strong case for increasing the existing £400 maximum fine for littering, perhaps to £1,000. This would bring home to magistrates the seriousness of the offence and persuade them to charge higher average fines than at present.
- b. There was a strong case for the introduction of new duties on local authorities and other land owners, on the basis proposed by the Secretary of State for the Environment. It would be necessary to go further and extend these duties to the owners of other highly visible areas, such as railway embankments and canal banks, despite the fact that they were not open to the public. But it had to be recognised that some of these areas were in a disgraceful condition as a result of fly-tipping, and it would be essential for the Government to ensure that there was much more effective enforcement of the law in this area in future: action was already in hand to achieve that. The new duties on local authorities and other land



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owners, including statutory bodies like British Rail, could impose substantial costs on them. They could be expected to look to the Government for additional Exchequer support to meet these costs. The Government would need to take a robust line, pointing to the substantial scope for savings in other areas of expenditure, which would release money for more effective litter clearing and prevention.

- c. There was a strong case for a requirement on commercial premises to keep their frontages clean. But there were also disadvantages, particularly the duplication with the local authority's duties, which might lead to confusion and lack of any effective responsibility. It might be better to rely on the duty on local authorities, backed by voluntary action by retailers and other commercial organisations. Such action was supported by the Confederation of British Industry and many Chambers of Commerce. It would however be open to individual local authorities to seek bye-laws imposing new duties on frontagers, and this would provide a useful opportunity for experimental schemes to explore whether such duties had a valuable part to play in future.
- d. There was a separate but linked problem with the handling of refuse from food retailers. If such refuse was left on the pavement it became an eyesore and a litter problem. But if it was kept in the shops there were potential public health and food safety problems. There might be a case for a requirement on food retailers to have their refuse collected frequently, by private companies, if necessary. Further consideration should be given to this in consultation with the Ministry of Agriculture, Fisheries and Food.
- e. Graffiti was another serious problem. There was a case for putting a duty on land owners to remove graffiti in public places. On the other hand this would involve imposing substantial costs on the victims rather than the perpetrators of graffiti. One possibility would be to require local authorities to remove graffiti, although this could be very costly. Furthermore, the technology for removing graffiti was still being developed. The best approach might therefore be to take a reserve power in legislation to require local authorities to remove graffiti, but to delay implementation until the financial and technological implications were clearer.
- f. The new duty on local authorities to keep their areas clean had to apply to fouling by dogs, and this would need to be covered in the Code of Practice. But there was also a strong case for putting a duty on local authorities to deal with stray dogs, on which the Royal Society for the Prevention of Cruelty to Animals (RSPCA) had been mounting a campaign. It had been

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suggested that the costs should be recovered by the reintroduction of a fee for dog licenses at a substantially higher level than had previously applied. But such a fee would be widely evaded and would be very costly to collect, and this was not an attractive option.

The Prime Minister summing up this part of the discussion, said that the new proposals for dealing with litter were a great improvement. The Group approved them, subject to a number of points of detail. There should be new powers to enable local authorities to introduce fixed penalty scheme for littering, and consideration should be given to increasing the maximum fine for litter offences to encourage magistrates to impose higher average fines. There should be duties on local authorities and on other land owners to keep their areas clean, on the basis proposed by the Secretary of State. But such duties should also extend to the owners of other land which was highly visible despite the fact that it was not open to the public. This duty should apply to railway embankments, canal banks and other similar areas. The disgraceful state of these areas was often due to fly tipping, and it would be essential to ensure that the law in this area was firmly enforced in future. There should be a Code of Practice, which should set out precisely what these duties entailed and how they should be discharged.

The Group accepted that there should be no general duty on commercial premises to keep their frontages clean for the reasons set out by the Secretary of State. The Government should however encourage local authorities to propose bye-laws imposing a frontagers' duty on an experimental basis to test the concept, in addition to promoting vigorous voluntary action. There was also a strong case for action on graffiti, although the Group recognised the difficulties of imposing duties on owners who were the victims rather than the perpetrators in this case. The Government should nevertheless consider legislating for a reserve power to require local authorities to remove graffiti in public places; but such a duty might not be brought into force until it was clear that there was effective technology for removing graffiti and the financial implications were clearer. The duty on local authorities to keep their areas clean and the related Code of Practice should cover fouling by dogs. There should also be a new legal requirement on local authorities to deal with stray dogs, although it would not be right to seek to recover the costs of this by reintroducing a fee for dog licences. It was also important for the Government to set a good example in dealing with litter, and all Ministers should be asked to ensure that their departments took the necessary action in relation to their own premises.

The Secretary of State for the Environment should now prepare a consultation document on all aspects of the Government's proposals on litter, and clear it with colleagues on H Committee. A ten minute rule Bill introduced by Simon Burns MP was due to have its Second Reading on Friday 12 May. It included provisions to introduce fixed penalties for

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littering, in line with the Group's conclusions, but would also impose a duty on frontagers. The Government should not object to the Bill have a Second Reading, although it would not be right to allow it to go through its remaining stages on the nod. Finally there was the related problem with refuse from food retailers, which could raise public health and food safety problems. There was a strong case for a new requirement on such retailers to arrange to have their refuse collected frequently, by private companies if necessary. The Secretary of State for the Environment should give this urgent consideration, in consultation with the Minister of Agriculture, Fisheries and Food. Subject to that consideration, proposals on this issue should also be included in the paper which the Secretary of State for the Environment would put to H Committee.

ii. Roads

The Secretary of State for Transport said that his minute of 4 May contained his proposals for dealing with litter on roads. The main problem for local and general purpose trunk roads was the way in which responsibility was currently divided between the county council and the district councils in shire areas. He proposed to change this unsatisfactory position, by placing sole responsibility on the district councils. They already had the major role in litter clearance, and the equipment to discharge it. This solution would also fit in with the new duty proposed by the Secretary of State for the Environment. Different considerations applied in relation to motorways, where it was important that his Department was able to control when lanes were closed for maintenance and litter clearance, both for safety reasons and to ensure that traffic continued to flow. In most areas the county councils acted as agents. Many of them were good, and he proposed that they should continue to fulfil this role, subject to more businesslike and detailed contracts. But where the local authorities were not fulfilling their responsibilities properly he had made it clear that he would remove the work from them and put it out to private contractors.

In discussion the following main points were made:-

- a. There were 296 shire district councils in England, and it was not clear that all of them could be expected to fulfil a new responsibility to clean litter from local and general purpose trunk roads effectively. It might be easier to ensure compliance if the 39 county councils were made responsible. On the other hand the district councils were responsible for cleansing, had the equipment to do it, and would be subject to the new duty proposed by the Secretary of State for the Environment. On balance therefore they were the best bodies to fulfil this function.
- b. One of the worst problems on motorways was litter on the central reservations. Often this appeared to be due to bad design, and the problem might be reduced as

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central reservations were modified in the course of maintenance.

The Prime Minister, summing up this part of the discussion, said that the Group endorsed the Secretary of State for Transport's proposals for dealing with litter on roads. He should now take these proposals forward in consultation with the Secretary of State for the Environment.

I am copying this letter to the Private Secretaries to the other Ministers present at the meeting, to Carys Evans (Chief Secretary's Office), to the others who attended the meeting, Trevor Woolley (Cabinet Office), and to Anne-Marie Lawlor (Department of Employment).

*Carys Evans*

*Dominic*

Dominic Morris

Roger Bright Esq  
Department of the Environment

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PRIME MINISTER

LITTER

You saw most of the papers for tomorrow's meeting over the weekend. The only new paper is the Cabinet Office brief by Richard Wilson immediately below this note. I suggest you use it as a handling brief for the meeting to go through the other papers. These are

Flag A: minute from Mr. Ridley

Flag B: minute from Mr. Channon

Flag C: minute from John Mills (Policy Unit)

DM

(D. C. B. MORRIS)

9 May 1989

PRIME MINISTER

Ref: P 03436

## LITTER

[Minutes from the Secretaries of State for the Environment  
(dated 5 May) and for Transport (dated 4 May)]

## DECISIONS

The minutes from Mr Ridley and Mr Channon report the outcome of the further work you commissioned at your meeting on 10 April.

2. You may wish to work through Mr Ridley's minute, picking up the main points including the following:

i. prevention of littering (paragraph 3). Mr Ridley proposes that local authorities should have power to introduce fixed penalty schemes for littering. You may wish to confirm this, which was agreed at the last meeting. You also asked then that consideration be given to increasing the maximum fine of £400 for litter offences. Mr Ridley repeats the figure without comment. You may wish to ask where his thinking now stands on the maximum fine. A further point which you may wish to raise is whether to make littering an absolute offence, or to retain the offence of depositing and leaving litter as Mr Ridley prefers;

ii. the duty on local authorities to keep land clear (paragraphs 5 and 6). Mr Ridley proposes a new duty on local authorities to keep open areas in their beneficial occupancy reasonably clean, and to have regard to a Code of Practice (sketched out in Annex A to his minute). You may wish to confirm this approach, also agreed at the last meeting;

iii. the duty on other corporate owners to keep their land clean (paragraphs 8 and 9). You concluded at the last meeting that there was a strong case for extending the duty



to keep land clean to corporate bodies in the public and private sectors, particularly where the public had to pass through the land as part of their corporate business. Mr Ridley proposes that the duty should be limited to statutory undertakers and to certain other "closely defined" types of landowner, where designated by local authorities, such as shopping precincts and private car parks, but not historic houses, gardens or tourist attractions. You will wish to consider how far the duty should extend.

iv. dust and refuse blowing from private land (paragraph 10). On sites such as construction sites, Mr Ridley proposes that the right course is to urge local authorities to use the powers which they already have. You will wish to consider whether this meets the problem.

v. enforcement of the new duties (paragraph 7). Mr Ridley proposes the use of orders by magistrates' courts as the main route for the aggrieved citizen, although mandamus would technically be available. You may wish to explore the scope of this new enforcement machinery.

vi. commercial frontages (paragraphs 11 to 14). The last meeting concluded that further consideration should be given to making the occupiers of commercial premises responsible for cleaning their frontages. Mr Ridley believes that a new statutory duty would be a needless complication and that the voluntary approach is best. You will wish to consider whether there should be a new statutory duty. You will also want to decide what should be said when Mr Simon Burns's Bill has its Second Reading on Friday 12 May.

vii. graffiti and fouling by dogs (paragraphs 16 and 17). Mr Ridley proposes that these should be covered by the new Code of Practice. You will wish to consider whether you are content.

3. You will also wish to consider Mr Channon's proposals for



## tackling litter on roads:

- i. for motorways the continued use of local highway authorities as managing agents for cleansing in most areas, but backed by the threat of bringing in private agents where the results are unsatisfactory;
  - ii. for local roads and all-purpose trunk roads the transfer of full responsibility for cleansing to district councils. The alternative would be to make the highway authorities responsible, subject to requirements on competitive tendering.
4. If you can reach agreement on these issues, you might ask Mr Ridley and Mr Channon to prepare detailed papers on the proposals for clearance by the group, and to put in hand the drafting of Instructions to Counsel for legislation in next Session's Environment Protection Bill.

## MAIN ISSUES

The offence of littering

5. You agreed at the last meeting that the £400 maximum fine for litter offences should be reconsidered. You may wish to press Mr Ridley and Mr Hurd on this point.
6. We understand that Professor Ashworth of the Tidy Britain Group (TBG) strongly favours a new absolute offence of littering, in place of the existing offence of depositing and leaving litter. We also understand that Mr Ridley is against this approach: he may point out that experience in Westminster is that offenders have not been pursued if they pick up litter when challenged. The problem with this is that a persistent offender may feel that he can avoid any penalty simply by picking up litter in the unlikely event that he is challenged. You may wish to ask Mr Ridley whether an absolute offence might not be a better deterrent than the current law.



Duties on other corporate land owners

7. Mr Ridley proposes a duty on land owners with statutory functions (eg British Rail, ports, airports) to keep clean areas to which the public have access. He also proposes powers to enable local authorities to extend this duty by designation to other closely defined categories of landowner, eg in relation to shopping precincts and car parks. But he excludes areas to which the public have access on payment, and other private grounds such as National Trust land and private commons, moors and forests.

8. In some respects these proposals seem to be weaker than Mr Ridley's earlier proposal for a general duty in relation to privately owned land to which the public have access. Such land would now only be covered if it had been designated a 'litter control area' by a local authority. It is not clear why there cannot be a general duty on corporate bodies in the public and private sectors to keep clean areas to which the public are admitted without charge. There are also strong arguments for extending this to other areas which are highly visible, such as railway embankments and building sites. You may wish to probe Mr Ridley's arguments for ruling out such a general duty, and ask Mr Channon about railway embankments.

Enforcement

9. Mr Ridley has a new proposal on enforcement, following the model of statutory nuisance. An aggrieved citizen could apply to a magistrates' court for an order directing a local authority to discharge their duties. For other land owners, the local authority could serve a notice, and either the authority or a citizen could go to a magistrates' court for an order. Mr Ridley prefers this route to relying on a writ of mandamus (although that would still be available for gross failures to comply with the new duties). His approach would have the merit of being simple and cheap. But you may want to ask how the new means of enforcement would work in practice: for instance -

- i. what is the significance of "aggrieved"? would the citizen have to show that he had suffered damage before he



could apply for an enforcement order?

ii. if the aggrieved citizen had suffered damage, would he be able to sustain a civil action in tort for damages for breach of the statutory duty by the local authority?

iii. would the aggrieved citizen be able to apply for an order under this new procedure to require the local authority to designate a privately-owned area as a "litter control area"?

iv. what would the aggrieved citizen's right be in the case of dust or refuse blowing from private land? Mr Ridley is proposing only to urge authorities to use the powers which they already have (paragraph 10);

v. is it right that Government departments should enjoy Crown immunity from the new measures (paragraph 18)?

vi. who will be responsible for keeping beaches clean?

#### Building sites

10. Mr Ridley rejects any special provision against litter which blows from one site (eg a construction site) onto adjacent land. He argues that local authorities already have powers to take action using planning conditions or under building, highways or public health law. But you may feel that a new general duty on builders and construction companies, enforceable by citizens or local authorities through magistrates' courts, might well prove a more effective deterrent. Another possibility would be a duty on owners to take reasonable care to prevent litter blowing onto adjacent land. You may wish to press Mr Ridley to consider these options more fully.

#### New duty on frontages

11. Mr Ridley rejects a specific duty on shopkeepers and others to keep their frontages clean. He argues that if they own the land it will be covered by his proposed power for local



authorities to designate it; and that if the local authority owns the land (eg the pavement) they will have the duty to keep it clean, and an overlapping duty on frontages would complicate matters. Dual responsibility would no doubt create some problems. But this may nevertheless be an area where a "belt and braces" approach would achieve more than a neat division of responsibilities. You may therefore wish to explore whether the arguments against a frontagers' duty are really that strong.

#### Simon Burns's Bill on Litter

12. Mr Simon Burns has introduced a 10 minute rule Bill on litter. It would give all local authorities the power to impose fixed penalties for littering, and make frontagers responsible for cleaning footpaths outside their premises. The Bill is due to have its Second Reading this Friday, 12 May. You have already decided that you favour fixed penalties. You will probably want to seek a decision on frontagers at this meeting, so that Ministers have an agreed line of response to the Bill on Friday.

#### Graffiti

13. Mr Ridley says that defacement by graffiti is already a public order offence. He suggests covering it in his Code of Practice on litter. You may wish to ask him to explain how this would work. It does not seem to be covered in Annex A to his minute. He rejects a duty on owners to clean off graffiti on the ground that this would often require substantial redecoration. You will want to consider whether this is right, or whether a duty on owners could be justified.

#### Fouling by dogs

14. Mr Ridley proposes to cover fouling by dogs in his Code of Practice, allowing citizens to enforce local authorities' duty to prevent and clear up fouling. The offences in this area are created in bye-laws, with fines up to £100. You may wish to ask Mr Ridley and Mr Hurd to consider increasing this maximum fine.

#### Roads: motorways

15. For motorways Mr Channon argues that the need to keep



traffic flowing and safety considerations mean that the responsibility for clearing litter must rest with the same agents who are responsible for general management and maintenance. That normally means the local highway authority, although private agents are now used in four metropolitan areas and are being considered for London. His general conclusion is probably right. But you may wish to press him to develop new, contractually binding standards for litter clearing, and perhaps also to extend the use of private agents rather than local authorities.

Roads: general purpose trunk roads and local roads

16. The position in relation to other roads is less satisfactory. There is a division of responsibility in shire areas between county councils (acting as the Department of Transport's agents for trunk roads and on their own account for local roads) who are responsible for cleansing related to safety and routine maintenance, and district councils with their general responsibility for cleansing related to amenity. Mr Channon recommends giving the 196 district councils sole responsibility for litter clearing on all these roads. This responsibility would be part of the duty proposed by Mr Ridley: detailed provisions would be included in the Code of Practice and would be enforceable through magistrates' courts. The work would be subject to the compulsory competition requirements of local government legislation. The main advantage of this approach is that district councils would have full responsibility for all aspects of litter, whether on roads or other public areas (often adjacent to roads).

17. The alternative, which Mr Ridley has supported in previous correspondence and at the previous meeting, would be to give sole responsibility to highway authorities. For trunk roads, the Department of Transport would be responsible, and would let strict and enforceable contracts to private sector agents. For local roads the 39 county councils would be responsible, subject to the compulsory competition requirements. The main advantages of this approach are that the Government would have better control over litter clearing on trunk roads, and a relatively



small number of county authorities would be responsible for all other roads.

18. You will want to consider whether to accept Mr Channon's proposal based on district councils, or to ask him to explore the alternative based on direct responsibility for his department and county councils.

Next Steps

19. If you can reach broad agreement at this meeting, you may wish to ask Mr Ridley and Mr Channon to prepare detailed papers on measures to combat litter, and to start drafting Instructions for next Session's Environment Protection Bill.



R T J WILSON  
Cabinet Office  
9 May 1989

LITTER

The papers from Nick Ridley and Paul Channon are on the right lines but there are several areas which still need detailed probing. Attached are two paragraph by paragraph notes covering the two papers.

There are also some general considerations which need addressing:

(i) Consultation

There is a good case for a short White Paper foreshadowing legislation next session. This would force the Department to work to a timetable and enable us to be sure that all the details are right. And it would emphasise the importance which the Government attach to the whole area.

It would also focus public and media attention on measures which will clearly be very popular. This could throw up additional good ideas, but, more important, a good public reaction would be a counterbalance to likely local authority pressure to try to make the Code of Practice as anodyne as possible.

(ii) The possible public expenditure implications need to be addressed. Authorities will certainly demand more resources. The higher figures for cleansing expenditure in Paris (at end of Nicholas Ridley's Annex B), indicate the likely arguments to be deployed, certainly by London boroughs. Many demands will not be justified but there may be some good cases - eg inner cities - where it would be a mistake to be too niggardly for the sake of relatively



small sums. The likely impact on magistrate courts expenditure also needs to be considered.

(iii) As regards aggrieved persons' right of enforcement through the courts against authorities who fail to clear litter, it will be absolutely essential to be clear what is meant by a 'person aggrieved'.

Under the 1936 Public Health Act this is someone who suffers from a nuisance, not just someone who observes it. Thus there is a danger that people concerned generally about their locality may be ruled out of order (and suffer costs) because their "interest" is deemed insufficient, unless, say, the relevant litter is in their street. (This is equally an issue apropos judicial review where the courts interpret a relevant interest quite narrowly).

A balance needs to be struck between enabling people to tackle their local authority on a reasonably general basis and avoiding purely frivolous or politically-motivated actions; but it would be wise for you to flag this up for careful consideration. The policy stands or falls by the effectiveness of enforcement.

(iv) As regards frontage legislation and duties on owners of land accessed by the public, there is a "burdens on business" angle which Tony Newton has already flagged up. From this perspective he argues that any obligation on frontages should be voluntary only. This however misses the point which concerned you most last time: leaving rubbish bags on the frontage pavement overnight, as opposed to sweeping the pavement (or clearing snow).

You need to insist that if this core problem is not tackled then the litter war will never be won.



(v) Related to this is the question of the Government's line on Simon Burn's Bill which is due to have a second reading next Friday. This seeks a frontage responsibility. It is inconceivable, given your public position on litter, to do anything other than support his Bill in principle. But it could be made clear that the Government was not necessarily arguing for compulsory sweeping of frontages, but rather for getting rid of overnight rubbish dumping.

*John Mills*

JOHN MILLS



LITTER: NICHOLAS RIDLEY'S PAPER

This is moving in the right direction but there are still a number of important loose ends on which you need to press.

Paragraph by Paragraph

Para 3: Enabling fixed penalty schemes on the Westminster model was agreed at the last meeting. The actual offence under the Litter Act 1983 is depositing and leaving litter so in practice Westminster are not pursuing offenders (596 out of 600) who pick litter up when challenged. This meets Douglas Hurd's concern about possible overload of the courts.

Not mentioned is which local authority employees would enforce the rules? Would they hire a new group of inspectors or should they be required to use existing staff such as park attendants? You suggested the use of traffic wardens which has many attractions provided they can be properly associated for this purpose with local authorities and not the police. Further work on this aspect is needed.

At the last meeting you also asked whether the £400 maximum fine should be increased. (It is a Scale 3 fine so it is uprated periodically). But £400 is already high and what matters is getting magistrates to impose higher fines within the limit. Nicholas Ridley should pursue this with the Lord Chancellor.



It is worth noting too that under the Town Police Clauses Act 1847 (s.28) a magistrate can impose up to 14 days imprisonment on anyone who throws dirt, litter or rubbish on any street. Perhaps this is worth publicising.

Para 4: The present law on fly tipping is defective and will be strengthened next year. You should ask though about the responsibility for registering carriers. It obviously should be the same local authority as has the general litter duty. In most cases this will be so, but in London it will be the responsibility of the London Waste Regulation Authority. This could lead to an awkward division of responsibility with the Boroughs who are the ones open to challenge for not clearing up rubbish.

Para 6: This puts flesh on the duty to clear up litter which it was agreed at the last meeting should be put on local authorities.

But is it sufficient for local authorities just to 'have regard' to a Code of Practice? Usually this merely implies the need to consider something but with the discretion not to be bound to follow it. 'Take account' would be stronger.

Consultation on preparing the Code is very important. It is not enough to consult only the Tidy Britain Group, local authorities and the contracting industry. The process must involve ordinary people (soon to be community charge payers) as a counterweight to local authorities who, collectively, are bound to try to water down the Code. One step might



be a formal consultation of parish councils.

This is over and above consultation on the litter policy as a whole.

Annex: I suggest you consider the outline Code of Practice, annexed to Nicholas Ridley's minute, at this stage. This remains very much an outline only. One key point:

- frequency of cleansing is crucial, together with people knowing what the frequency is. Authorities must be obliged to make cleansing schedules public so that people coming home in the evening of the day their street is being swept can see for themselves if the job has been done. Otherwise, authorities will always have an answer to complaints that 'it's your turn tomorrow'.

*Schedule 7  
cleansing*

Para 7: Enforcement is crucial. The idea of a procedure involving magistrates' courts is a good one because ordinary people can have relatively easy access (but it still takes time and effort). Judicial review only (in the High Court) would require a panoply of lawyers. But the Home Office will be concerned about the potential pressure on the courts.

You wondered last time whether we could not add a 'criminal' function to the Small Claims Tribunal for the collection of fixed penalty fines to get round the problem of burdens on magistrates courts. One can also envisage the option of devising a 'small claims' procedure to enforce the litter



duty (and any subsequent similar duties eg on street lighting and road maintenance if the litter model works well).

Para 8: The proposals on other land with public access are satisfactory and reflect discussion at the last meeting. The special position of certain major urban commons (like Wimbledon Common (governed by its own 19th Century Act) and Hampstead Heath) however needs careful attention so that they are not excluded.

Para 11: This does not meet your concern on frontages. The crucial point here is not sweeping the frontage (most shopkeepers do this) but putting out on the pavement rubbish bags for collection the next morning. Nor does it address practice elsewhere in Europe, where a variety of frontage duties do exist.

← You should ask Virginia Bottomley to summarise the European position. DOE officials have been studying this and she has just been to Paris. (The note on this at the end of Nicholas Ridley's Annex B is most interesting).

Last time you suggested that restaurants etc should have to get contractors to collect rubbish at the end of the evening so that it was not left out overnight. This is an excellent idea. Moreover, it calls into question whether refuse collection from commercial premises should be an automatic local authority function, funded by rates, at all. Why could it not be done privately, with business rates reduced accordingly?



This was the arrangement when I lived in Hong Kong: the Urban Council only collected domestic refuse. And the private refuse collection business flourished.

One particular argument in favour is that local authorities could be in an impossible position trying to prosecute people for leaving out tons of rubbish on frontages when the cause might be its own failure to collect. Some authorities are bound to find it difficult to have both the regulatory and operational function, and the Government have recognised this (eg in the water industry as inherently undesirable).

Para 14: Action on market stall licences would be very useful and should be taken without delay if it is not dependent on primary legislation. The same principle should be carried over into motorway service area franchises.

Para 16: This confirms the question you posed last time whether graffiti was an offence. It is a criminal offence and Nicholas Ridley is right not to mix this up with the immediate litter problem. (Though on the educational side it certainly should be treated the same).

Para 17: On fouling by dogs, the tougher the action you take the more popular it will be. This is a frightful problem on pavements and in parks. The problem is that by-laws are not enforced and no-one generally knows about them. Only a handful of authorities such as Westminster take the issue seriously (Embankment Gardens, for example, behind MOD has special bins



for dog faeces and prominent notices on the subject).

Maximum fines under by-laws should be £400 as under the Litter Act.

It is important to be clear whether the proposal right of redress in magistrates courts could be aimed at individuals allowing their dogs to foul public places as well as local authorities failing to clean up. One suspects that in practice this would be difficult legally (at least without photographic excellence) but it would be the best way of empowering aggrieved parents and bringing home to dog-owners how obnoxious their behaviour can be. The opportunity to tackle this boldly should not be lost.

Para 18: Paul Channon will have been briefed to speak on what to do about railway embankments. Despite Nicholas Ridley's reservations there seems no alternative to requiring BR to keep these clean.)



PAUL CHANNON'S NOTE

On the roads side, this is very positive. The officials in DTP responsible for motorway and major roads maintenance are enthused by the fillip which your litter crusade has given to the whole question of contracting out.

But it is silent on the problem of litter on railway embankments, and you should press him on this. They are so often a major eyesore. There seems to be no alternative but to put an obligation fair and square on BR because otherwise nothing will be done.

Paragraph by Paragraph

Para 5: Putting responsibility for local roads litter clearance entirely on districts ties in with Nicholas Ridley's proposal. But you made the point last time that putting responsibility on counties would mean only one authority to prosecute. And, as you said, the county could always delegate the actual work to districts.



On balance, Paul Channon's proposal seems best because

- Districts already have the major cleansing responsibility and in practice there is virtually no transfer of function in removing counties' responsibility for cleansing for safety. On most local roads this is effectively a non-existent responsibility.
- The Audit Commission has recommended that districts should have full responsibility for road cleansing on grounds of efficiency.
- It does tie in with Nicholas Ridley's proposal.

Paras (7) - (8): The same argument holds good for "all purpose" trunk roads, such as the North Circular, now under DTp control. Here there is at present a nonsensical division of responsibility between district's cleansing for public health and DTp (using agents) for safety. In London, this simply means boroughs have two sources of funds for cleansing such roads, and squabbles as to who pays for what. It makes sense to put the responsibility under one umbrella.

Para (10): On the other hand, retaining full DTp responsibility for motorways is sensible. The way forward here has to be on competitive contracting-out.



Para (12): It is an excellent idea to add litter checks to the duties of patrolling motorway maintenance inspectors. It should have been done years ago.

Para (16): The suggestion to encourage market testing by local authorities is important and ties in with wider initiatives in this area. You should warmly welcome this and endorse the need to review the outdated 1970 Act which currently rules out direct market testing.





cc P.T.U.

PRIME MINISTER

LITTER

1. At our meeting on 10 April you asked me for a further paper on solutions to the problem of litter.

2. Our ultimate objective is to engender sufficient civic pride to prevent litter in the first place. Campaigns and education have their part to play. Ministers have been actively promoting local schemes, and Kenneth Baker is taking steps to change attitudes in schools. But to back this up we need to strengthen the law and its enforcement. I set out below my proposals for doing so, taking first prevention and then cures.

#### Prevention of Littering

3. At present there are about 1700 convictions a year under the Litter Act 1983. The maximum fine is £400 but the average is £35. I recognise that Douglas Hurd has a problem of police resources for enforcement and that further guidance to the courts may be needed. My main proposal is however to enable local authorities to introduce fixed penalty schemes on the successful Westminster model, using their own staff rather than the police. This has proved a useful tool in changing behaviour.

#### Fly Tipping

4. Fly tipping is littering writ large, and I have already made proposals for deterring it in our forthcoming waste disposal legislation. In brief, there will be a duty of care on waste producers which will in effect restrict consignment of waste to registered carriers; a power to remove carriers from the register if convicted of fly tipping; and a power to prosecute the registered keeper of a vehicle seen fly tipping. We have supported Joan Ruddock's Bill, which has just received its Third Reading in the Commons. This supplements our proposals with an extra power for vehicles suspected of being used in fly tipping to be impounded until claimed by the owner.

#### Removal of Litter

5. The existing duties of local authorities are to organise a refuse collection service; to empty and clean any litter bins they provide; to keep highways clean; to remove abandoned cars; and to deal with accumulations which threaten public health. They also have a range of powers to deal with litter. We must systematise these duties and powers to make local authorities take positive action to secure a cleaner environment. They will no doubt argue for additional resources but we must press them on the undoubted scope for greater efficiency, particularly as they are required to put their refuse and litter collection, street cleaning etc out to competitive tender under the Local Government Act 1988.





6. I propose therefore to place on local authorities a duty to keep clean all land in their beneficial occupancy which is open to the sky and to which the public have access, such as parks, urban commons, school playing fields and car parks. I shall myself take powers to issue a Code of Practice on Cleaning and to oblige authorities to have regard to the Code. I am advised that this is an appropriate formula to allow authorities some flexibility in applying the Code to different local conditions. The Code is to be prepared in consultation with the Tidy Britain Group, local authorities and the contracting industry. Local authorities will have a particularly important role here, drawing upon the experience they are already gaining in setting precise specifications - with incentives and penalty clauses - for contractors under the tendering arrangements. I attach at Annex A a brief summary of possible topics for inclusion in the Code, drawing on the interim results of TBG pilot projects.

#### Enforcement of Duty

7. The duty to keep clean will be open to enforcement by a citizen (either a local resident or voluntary group) aggrieved by failure of the local authority to discharge its duty. I propose to follow the long established model of statutory nuisance, under which an aggrieved citizen can apply to the local magistrates' court for an order directed to the local authority to discharge its duty and abate the nuisance; in this case, litter. This is an effective, cheap and simple remedy available to local people. The evidence is that local authorities comply with such orders, though they can be fined if they do not. For gross failure to comply with the duty mandamus would still be available but is a costly and cumbersome remedy for most defaults of this kind. Nor do I favour the route of criminal proceedings and consequent fine; and Labour's idea of entitling the aggrieved citizen to cash compensation is obviously open to abuse.

#### Other Land with Public Access

8. I propose to extend the duty to keep clean areas to which the public have access to other land owners with statutory functions, such as railways, ports and airports. I also propose to enable local authorities to extend the duty, by means of designation orders, to certain other closely defined types of landowner. This will enable areas such as shopping precincts and some private car parks to be covered while avoiding the difficulty of prescribing them in detail from the centre. I propose to extend the Litter Act to all these areas so as to enable the owners subject to the duty to bring private prosecutions against people dropping litter on their land. The fixed penalty scheme would not be appropriate in these cases.

9. I proposed to exclude from the duty areas to which the public have access on payment (such as historic houses, gardens and other tourist attractions) since the owners are usually private and should themselves have a strong incentive to keep their property clean. I would also exclude private grounds open to the public without admission charge such as National Trust land, private commons, moors and forests since the duty would be impossible to discharge and its imposition might lead the owner to deny public access.

*including  
landowners*





10. I have also considered the problem of dust and refuse blowing from private land, especially construction sites, where, however, local authorities can already take action by imposing planning conditions or under building, highways or public health legislation. The right course is to urge authorities, through the Code and other means, to use the powers they already have.

#### Frontages

11. I have considered further the question of imposing a duty on shopkeepers and others to keep their frontages clean. On reflection I believe that a statutory duty on shopkeepers to keep their frontages clean would be a duplication. Where they own a frontage, the proposed power for the local authority to designate the land in question would meet the point. Where the local authority own the frontage, eg the pavement, the duty to clean devolves on the authority and would be needlessly complicated by an overlapping duty on the frontager. A duty on the frontager would also put him at risk of civil action if passers-by slip over partly cleaned litter, dead leaves or snow. (I support the view taken by Tony Newton on the Simon Burns Bill that the voluntary approach is the best one.)

12. I propose to overcome the problem of plastic sacks littering frontages and the streets by including in the Code of Practice a provision that refuse must be collected regularly and occupiers informed of the times. Local authorities can then deal under the Litter Act with deposits at other times and with inadequately secured sacks.

13. Fast food shops are prolific sources of litter. Many try hard to keep clean the immediate environs of the premises and provide (or sponsor) bins in the same area. The main problem lies further away where the wrappings are discarded. There is a new and so far untested model being used in Paris which requires fast food outlets to clear up within 30 metres of their premises. By-laws along these lines would be possible, but there would be enforcement difficulties. My own preference is to depend on the duty on local authorities to clean the highway, together with prosecutions under the Litter Act.

14. Market stallholders are a particular problem but the terms of the licence should include a duty to clean the stall area, (or the charge for the licence should cover the cost of cleaning); while the local authority is already under a duty to clean the highway and will be under the new duty to clean other land in their occupation.

15. In the light of our discussion we will also need to consider how to respond to Simon Burns' Bill, which seeks to provide in general terms for fixed penalties and a cleanliness responsibility on commercial frontages. I propose therefore to write to colleagues on this after the meeting on Wednesday.





16. Defacement by graffiti is a public order offence under the Criminal Damage Act 1971 for which Douglas Hurd is responsible. Subject to his views I regard enforcement as a matter for the police rather than for local authorities. We shall provide advice in our Code of Practice. There are signs from our Estate Action programme that community involvement in council estate management can be successful in preventing and cleaning graffiti. A duty on a property owner, public or private, to clean off graffiti would make a criminal of the victim. Substantial redecoration is often the only practical solution.

#### Dogs

17. Local authorities already have express powers to make by-laws to prevent dog fouling (usually on pavements, verges and beaches); to ban dogs from certain areas (usually parks and children's play areas); and to require owners to clear up after their dogs. Offences against by-laws attract fines up to £100. Most local authorities do have by-laws banning dogs and fouling. Cleaning up faeces comes under the general duty to clean. But local authorities are failing to discharge their duties, and I propose to make specific references in the Code of Practice which will in turn enable the citizen to seek redress.

#### Other Government Departments

18. Crown exemption applies to government property, but I shall ask other Departments to set a good example and follow the Code. Paul Channon is reporting separately on highways. He may also have views on railway embankments where the new provisions on fly tipping will help. In contrast to stations, where we are ready to impose a duty to keep clean, the public do not have access to embankments but they are highly visible and often littered.

#### Foreign Litter Legislation

19. A summary of this is attached at Annex B.

#### Summary

20. Subject to your views I propose to seek colleagues' agreement in detail to the following measures:

(a) powers for local authorities to impose fixed penalties for littering;

(b) a duty on local authorities to clean areas open to the sky in their beneficial occupation to which the public has access.

(c) the same duty on other land owners with statutory functions;





(d) a power for local authorities to designate certain privately owned areas for the same duty, such as shopping precincts;

(e) a power to issue Codes of Practice to which landowners within scope of (b), (c), and (d) above must have regard, include dog fouling as well as litter;

(f) a power for an aggrieved citizen to apply to the magistrates for an order for land within scope of (b), (c) and (d) above to be cleaned;

(g) a similar power for local authorities in respect of land within scope of (c) and (d) above, with a default power for them to do the work themselves and recover costs.

A summary of the proposed legislative provisions is at Annex C.

21. I shall need at the appropriate time to go to H Committee and consult with local authority associations and others prior to drafting provisions for the Environment Protection Bill.

22. Copies of this minute go to Douglas Hurd, Paul Channon, Norman Fowler, John Wakeham, John Major, Patrick Mayhew and to Sir Robin Butler.

*N.R.*

N.R.

5 May 1989

*(approved on the Secretary of State and signed in his absence).*



SUMMARY OF PROPOSED LITTER LEGISLATION

1. Powers to enable local authorities to introduce fixed penalties for littering.
2. Power for Secretary of State to fix level of charges for fixed penalties.
3. Duty on local and similar authorities to keep reasonably clean all land in their beneficial occupancy which is open to the sky and to which the public have authorised access.
4. Duty on owner (such as statutory undertakers) of certain other land which the public have access to keep it reasonably clean.
5. Power for local authorities to designate other land in private ownership to which the public have access as "litter control areas" and the extension to those areas of the Litter Act.
6. Duty on local authorities, and other land owners subject to the duty to keep clean, to have regard to any code of practice approved by the Secretary of State in carrying out their duty. Code to be admissible evidence in any proceedings.
7. Powers for local authorities to serve notice (similar to statutory nuisance notices under Section 93 of Public Health Act 1936) to enforce the duty on other land owners to keep clean.
8. Power for local authorities to apply to the magistrates' court if the above notices are not complied with.
9. Power for persons aggrieved to apply to the magistrates' court in respect of nuisance from litter on any land subject to the duty to keep clean, on the model of Section 99 of the 1936 Act.

10. Penalties

- (i) fine in the event of failure to comply with magistrates' order;
  - (ii) mandamus available as last resort in respect of public authorities;
  - (iii) default powers for the local authority to clear other owners' land within scope of the duty and recover their expenses.
11. (Subject to DTP agreement) amend section 22 of the Control of Pollution Act to clarify that district councils have responsibility for cleansing all highways (except motorways) for all purposes.
12. Duty on district councils to have regard to any code of practice approved by the Secretary of State in undertaking the duty to clean highways. Code to be admissible evidence as above.



PRIME MINISTER

## LITTER

The next meeting of your group on litter is on Wednesday. You might like to glance through the key papers over the weekend.

At Flag A is Mr. Ridley's note which builds on two areas of concern at the last meeting. First, how the general duty will work. This is much better, allowing the citizen to apply to the local magistrates court for an order to the local authority to discharge its duty; much simpler than a writ of mandamus. But it seems to rest on the standards of cleanliness set in the Code of Practice, and this is still far too vague. You will want to press Mr. Ridley fairly hard on this.

On frontages, the paper is not wholly convincing. He suggests this would be covered by the ability of local authorities to designate private land. It is difficult to see how this can be done without widening unacceptably the categories of private land to which the general duty would apply. John Mills' note (see below) suggests the much more radical solution of moving to the Hong Kong arrangements whereby business refuse is entirely collected privately, and business rates reduced accordingly. You will need to have reached a decision on what we do about shop frontages after Wednesday's meeting so that the Government has a convincing line when Simon Burns' Bill on shop frontages gets its second reading on Friday, 12 May.

At Flag B is a note from the Secretary of State for Transport. He proposes to place the legal responsibility for litter clearance on local and trunk roads with District Councils. While they would be the authority against whom the citizen would seek redress if the litter were not cleared, the actual clearance is increasingly to be contracted out to the private sector.

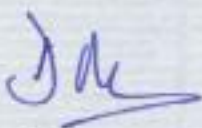


At Flag C is a good and thorough note from John Mills in the Policy Unit which raises three general points. First, the method and (by implication) timing of consultation. There is much to be said for a White Paper, but it puts a premium on the Department of the Environment getting their act together quickly: the White Paper would need to be issued before the Summer Recess for Instructions to Counsel to be ready in good time to catch next session's Green Bill. You will want to ask Mr. Ridley whether he could meet this timetable.

Second, how do we deal with the inevitable local authority demands for more public expenditure to meet these duties? Outside those inner city areas which are already subject to special Government measures it seems to me that this is pre-eminently an area where the community charge proves its worth: nowhere else is the link between local authority services and what you pay for them closer than in refuse collection and litter clearance.

Third, what triggers the citizen's right to enforce the duty through the courts? This needs to be made as easy as possible consistent with ruling out frivolous or vexatious litigation.

The annexes to John Mills' note raise the lot of detailed but important legal points. The Law Officers were not represented at your last meeting, though they have now been copied in on the papers. Agree that a Law Officer should be present at next Wednesday's meeting?



DM

Yes ✓

5 May, 1989.



# **Control of Litter (Fines) Bill**

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## **ARRANGEMENT OF CLAUSES**

### **PART I**

#### **FIXED PENALTIES**

Clause

1. Procedure.
2. Payment of fixed penalty.
3. Amount of fixed penalty.
4. Fixed penalty notice.
5. Powers of officers.
6. Interpretation.
7. References in proceedings to notices and fixed penalties under this Act.

### **PART II**

#### **CLEANLINESS OF PUBLIC FOOTPATHS**

8. Responsibility for the cleanliness of public footpaths.

### **PART III**

#### **GENERAL**

9. Short title, commencement and extent.

*Control of Litter (Fines)*

1

A

**B I L L**

TO

Give local authorities the power to impose on-the-spot fines for litter offences and to make retail outlets and other premises responsible for the cleanliness of the public footpaths outside their premises; and for connected purposes. A.D. 1989.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5

## PART I

## FIXED PENALTIES

10

1.—(1) Where a constable or an authorised officer finds a person on any occasion and has reason to believe that on that occasion he is committing or has committed an offence under section 1 of the Litter Act 1983, he may give that person a notice in writing offering the opportunity of the discharge of any liability to conviction of that offence by payment of a fixed penalty under section 2 (Payment of fixed penalty) of this Act. Procedure. 1983 c. 35.

15

(2) A person to whom a notice is given under this section in respect of an offence shall not be liable to be convicted of that offence if the fixed penalty is paid in accordance with the said section 2 before the expiration of 14 days following the date of the notice or such longer period, if any, as may be specified in the notice.

20

(3) Where a person is given a notice under this section in respect of an offence proceedings shall not be taken against any person for that offence until the end of the period of 14 days following the date of the notice or such longer period, if any, as may have been specified in the notice.

25

(4) A notice under this section shall be in the form prescribed by section 4 (Fixed penalty notice) of this Act and shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—

30

- (a) the period during which, by virtue of subsection (3) above, proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which the fixed penalty may be paid.

[Bill 92]

50/2



(5) In this section "proceedings" means any criminal proceedings in respect of the act constituting the offence specified in the notice under this section, and "convicted" shall be construed in like manner.

Payment of fixed penalty.	<p>2.—(1) Payment of a fixed penalty shall be made to or at the office of the treasurer of the local authority of the area in which the offence was committed.</p> <p>(2) Sums paid by way of a fixed penalty for any offence to which this Act applies shall be applied by the local authority</p> <p>(a) to meeting the expenses of the local authority in implementing the provisions of this Act; or</p> <p>(b) to enhancing the environment or the amenity of any part or parts of its area.</p> <p>(3) In any proceedings a certificate that payment of a fixed penalty was or was not made by a date specified in the certificate to or at the office of the appropriate treasurer shall, if the certificate purports to bear the signature of the appropriate treasurer, be sufficient evidence of the facts stated unless the contrary is proved. In this subsection the word "signature" includes a facsimile of a signature by whatever process reproduced.</p>	5
Amount of fixed penalty.	<p>3. The fixed penalty for an offence to which this Act applies shall be an amount equal to one tenth of level 2 on the standard scale.</p>	20
Fixed penalty notice.	<p>4.—(1) A notice under section 1 (Procedure) of this Act offering the opportunity, by payment of a fixed penalty, of the discharge of any liability to conviction of an offence to which this Act applies shall be as specified in the form set out in the Schedule to this Act.</p> <p>(2) A notice specifying an alleged offence shall contain a reference to section 1 of the Litter Act 1983.</p>	25
1983 c. 35.		
Powers of officers.	<p>5.—(1) An authorised officer on production, if required, of his credentials, may where he has reasonable grounds to believe that an offence to which this Act applies is being committed or has been committed, request the name and address of any person who, in his opinion, is committing or has committed the offence.</p> <p>(2) Any person who, on being asked for his name and address under this section, does not give them shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.</p>	30
Interpretation.	<p>6. In this Part "authorised officer" means an officer of a local authority authorised by the local authority in writing to act in relation to the provisions of this Act.</p>	
References in proceedings to notices and fixed penalties under this Act.	<p>7. In any proceedings for an offence to which this Act applies, no reference shall be made to the giving of any notice under this Act, or to the payment or non-payment of a fixed penalty under this Act, unless in the course of the proceedings or in some document which is before the court in connection with the proceedings reference has been made by or on behalf of the accused to the giving of such a notice, or, as the case may be, to such a payment or non-payment.</p>	40
		45

*Control of Litter (Fines)*

3

**PART II****CLEANLINESS OF PUBLIC FOOTPATHS**

5 8.—(1) The owner and occupier of any retail outlet or other place of business shall keep the public footpath outside their premises free from filth, dirt or other offensive matter.

Responsibility for the cleanliness of public footpaths.

(2) Failure to comply with subsection (1) above shall be an offence.

(3) A person found guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

10

**PART III****GENERAL**

9.—(1) This Act may be cited as the Control of Litter (Fines) Act 1989.

(2) This Act shall come into force on 1st January 1990.

(3) This Act extends to Northern Ireland.

Short title, commencement and extent.



4

Control of Litter (Fines)

Section 4(1).

SCHEDULE

NOTICE OF OPPORTUNITY TO PAY FIXED PENALTY

PART I

CONTROL OF LITTER (FINES) ACT 1989

Serial No. .... 5

To: .....

Address: .....

.....

.....

You were seen at/in ..... 10

on..... at..... in

circumstances giving me reason to believe that an offence, details of which are given below, was being committed or had been committed.

Signature ..... Authorised Officer 15

Name of Local Authority

If before the end of..... days from..... (date) the sum of £..... being the fixed penalty for the offence is paid to the Local Authority Treasurer at..... proceedings will not be taken for the offence and any liability to conviction of the offence will be discharged. Payment may be made in person or by post. 20

Cheques, postal orders or money orders should be made payable to..... If cash is being sent this should be by registered post. In the case of payment made by post, sufficient time must be allowed to ensure that the payment is received by the..... within the time specified for payment. 25

Part II of this notice must accompany the payment to the..... or alternatively the serial number of the notice must be quoted. If the fixed penalty is not paid you will be liable to legal proceedings.

PART II

Serial No. of notice..... 30

To the .....

.....

(insert address of Treasurer)

*Control of Litter (Fines)*

5

I enclose the sum of £..... as payment of the fixed penalty for the  
offence mentioned in Part I of this notice.

Name (in block capitals).....

Address (in block capitals).....

5 .....



## Control of Litter (Fines)

### A BILL

To give local authorities the power to impose on-the-spot fines for litter offences and to make retail outlets and other premises responsible for the cleanliness of the public footpaths outside their premises; and for connected purposes.

*Ordered to be brought in by  
Mr. Simon Burns, Mr. Andrew Mitchell,  
Mrs. Gillian Shephard, Mrs. Rosie Barnes,  
Mr. Archy Kirkwood, Mr. Jerry Hayes,  
Mr. David Nicholson, Mr. Timothy Kirkhope,  
Mr. Alan Amos, Mr. David Wilshire  
and Mrs. Teresa Gorman*

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*Ordered, by The House of Commons,  
to be Printed, 7th March 1989*

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LONDON  
Printed and published by  
Her Majesty's Stationery Office  
Printed in the United Kingdom at  
The Parliamentary Press

£1.65 net

[Bill 92]

(309299)

50/2

ISBN 0 10 309289 7

**PROPOSED CODE OF PRACTICE ON LITTER PREVENTION AND CLEANSING:  
SUMMARY OF TOPICS TO BE COVERED, BASED ON ADVICE OF TBG**

1. The proposed Code of Practice will apply to local authorities in carrying out their duty to keep land clean, as well as to other landowners to be given the same duty. Both will be required to have regard to the code in discharging their duty.

2. This needs to be subject to full consultation with local authorities, contractors and others. (It may prove appropriate for the more detailed advice to be put into a separate non statutory package).

**STANDARDS OF CLEANLINESS**

3. Standards of cleanliness and tidiness for the range of different types of land covered by the duty (roads, verges and pavements; car parks; concourses and forecourts; public open spaces etc) will be specified. Standards may be defined by reference to parameters such as absence of litter, dirt and dog faeces, and visual appearance, including graffiti; and a definition of litter. Quantifiable standards such as number of litter items or weight of litter per square metre are a possibility but there are problems in defining, quantifying and evaluating these.

**METHODS OF CLEANSING**

4. Guidance will be required on appropriate methods and frequency of cleansing and litter collection for the various categories of land covered by the code as well as particular targets such as litter bins, fly tipping and dog faeces. Advice will cover a wide range of specialised aspects of best practice such as synchronisation of refuse collection and litter bin emptying; recommended types of litter bin; and health aspects of particular hazards.

**DESIGN AGAINST LITTER**

5. Litter control should be incorporated in design such as layout of open spaces and parks; siting and design of litter bins; and provision and management of recycling facilities.



#### COMMUNITY ACTION

6. This will be a key element in the attack on litter. Local authorities in particular should involve the community in litter prevention and abatement. Recommended action may include litter-free zones; the appointment of litter officers; liaison with voluntary groups; and education and awareness raising.

#### ENFORCEMENT

7. Advice on enforcement should cover not only the fixed penalty scheme (numbers of enforcement officers etc) but also existing anti-litter legislation. The facilitation, by means of advice, of action by citizens to prosecute breaches of the new duty to keep clean should be mentioned in the code, but explained in detail in an advisory leaflet.

DOE

May 1989

## FOREIGN LITTER LEGISLATION

COUNTRY	LEGISLATIVE PROVISIONS	FRONTAGES	EDUCATIONAL/ PROMOTIONAL PROVISIONS	COMMENTS
Belgium	No national legislation - local byelaws prohibit littering	Duty on all occupiers through byelaws	None apart from a few campaigns mounted by voluntary groups	Little enforcement for either litter or refuse collection laws. Litter is a major problem. Some byelaws state times domestic bins are to be put out prior to collection.
Germany (FR)	No specific litter law. Global duty to minimise and dispose of waste safely. This Federal law administered by the Landers under guidance from Federal Government. Escalating fines for improper disposal DM5-DM 4,000. Lander can also make local enactments.	Duty on all occupiers through local enactments	Fed. Govt/LA's	Enforcement not required - social pressure ensures laws are obeyed. LA's spend heavily on street cleansing; refuse disposal/collection facilities (including recycling)
Greece	National statutory guidelines on proper disposal of litter	None	Duty on LA's but none do	Laws exist but no enforcement and ignored by public. Litter is a problem.
Ireland (Republic)	1. Duty on LA's to take action to prevent litter 2. IR £25 fixed penalties issued by wardens	Duty on all to keep frontages of land visible from public land clean. Byelaws can also compel occupiers to sweep roads.	Duty on LA's but none do	Stringent laws exist but not enforced and ignored by public. Litter is seen as a major problem



Australia	No Federal Law - each state has own laws	Duty on shops	None	Strict enforcement, but hardly used as people do not seem to litter
	<u>Queensland</u> No details			
	<u>Victoria</u> No details	Duty on shops through byelaws	State Government through its Environmental Protection Agency	
	<u>Tasmania</u> No details		State Government through its Litter Control Council (Part of Environment Department)	
	<u>W. Australia</u>			
	1. On-the-spot fines - A\$40	No duty	State Government through its agency - Keep Australia Beautiful Council (WA)	Revenue from Fines retained by the enforcement agency issuing tickets
	2. LA's can use litter wardens			
	3. LA's can order people to provide and maintain litter bins			
Austria	National legislation prohibits littering; augmented by local byelaws. Terms of imprisonment may be imposed in addition to a fine	Duty on all occupiers	None	No information on scale of enforcement required. Highway cleansing duties similar to UK's
Finland	1. National legislation prohibiting littering 2. Guidelines for LA's on litter prevention issued by Government.	Duty on land owners - includes roads under 15m wide	Central Government but some done by LA's under litter guidelines.	No information on scale of enforcement required but LA's do employ large cleansing workforces.

3. Offence to transport process or carry out a trade in a manner that creates litter.

4. Police have power to arrest litterers

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Italy	No specific litter law covered by general waste collection/disposal legislation	None	Duty on Regional Governments but hardly anything done	Laws exist but little enforcement and ignored by public
Luxemburg	National legislation prohibits littering - fines up to LF 250,000	Duties on commercial occupiers through byelaws	None	No information on scale of enforcement required. There appears to be intensive street cleansing.
Portugal	No national legislation. Some local byelaws	None	Duty on LA's but hardly anything done	Nothing really done but litter does not seem a problem. Nightly collection of domestic refuse.
Spain	No specific national litter law although it is illegal to dump - fines up to £5,000. Duty on LA's to collect refuse and litter	None	Central Government has just started anti-litter campaign	Hardly any enforcement. Litter is swept up rather than prevented. Cities are therefore clean but countryside resembles a large dumping ground

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Singapore	<ol style="list-style-type: none"> <li>1. Litter laws directly under control of Government Commissioner</li> <li>2. Occupiers required to keep refuse secure</li> <li>3. Littering prohibited</li> <li>4. On-the-spot court summons (NOT fines)</li> <li>5. Officers have powers of arrest and right to demand proof of identity.</li> <li>6. Penalties up to \$2,000</li> <li>7. All costs incurred by Government can be re-couped from offenders</li> </ol>	Duty on all occupiers	Government	Laws strictly enforced but social pressure plays a large part to ensure laws are obeyed; daily refuse collection
Sweden	<ol style="list-style-type: none"> <li>1. National legislation prohibition littering in the country and public places - fines and 6 months imprisonment</li> <li>2. Municipalities have duties to keep urban areas clean</li> </ol>	LA's have powers to impose duties on all occupiers	Government sponsored 'Keep Sweden Clean'	No information on scale of enforcement required; there appears to be little need.
Switzerland	No specific national litter law. Litter treated as part of waste disposal/collection where it is illegal to cause damage to the environment	Duty on occupiers applies only to small communities	Mainly federal Govt. with LA's acting as agents	Enforcement not required - social pressure ensures laws are obeyed. LA's do spend heavily on street cleaning/ refuse disposal/collection facilities to ensure public have adequate places to dispose of waste

## LITTER, CLEANING AND REFUSE COLLECTION IN PARIS

1. Mrs Virginia Bottomley MP, Parliamentary Under-Secretary of State at the Department of the Environment, visited Paris Town Hall on 27 April 1989 for discussions and a demonstration with officials of their Direction de l'Eau et de la Proprete.
2. The Direction employs 5,000 staff on water and cleansing together. Capital expenditure on cleansing is about £17m a year and revenue expenditure about £180m, of which about half relates to refuse collection. Privatisation is under way and about half of the refuse collection will be private by 1992. This compares with expenditure in London on refuse collection which is estimated at about £100m for the whole of Greater London with about half of that relating to the inner London boroughs.
3. Streets are cleaned one or more times daily and hosed daily, after refuse collection. Collection is daily, late evening or early morning. The service appears to be well mechanised and efficient except in some immigrant areas.
4. It is possible for an aggrieved citizen to bring an action before a tribunal if an authority performs its cleaning duties poorly, but such actions are slow and rarely brought.
5. There are offences for littering and putting out dustbins too early or leaving them out too long. Shopkeepers are under a duty to clean their frontages and fast food restaurants to clean within 30 metres of their premises. Authority wardens can impose fixed penalties for littering, but cannot require a person to give his or her name. Prosecutions of any sort are few.

DOE



SUMMARY OF PROPOSED LITTER LEGISLATION

1. Powers to enable local authorities to introduce fixed penalties for littering.
2. Power for Secretary of State to fix level of charges for fixed penalties.
3. Duty on local and similar authorities to keep reasonably clean all land in their beneficial occupancy which is open to the sky and to which the public have authorised access.
4. Duty on owner (such as statutory undertakers) of certain other land which the public have access to keep it reasonably clean.
5. Power for local authorities to designate other land in private ownership to which the public have access as "litter control areas" and the extension to those areas of the Litter Act.
6. Duty on local authorities, and other land owners subject to the duty to keep clean, to have regard to any code of practice approved by the Secretary of State in carrying out their duty. Code to be admissible evidence in any proceedings.
7. Powers for local authorities to serve notice (similar to statutory nuisance notices under Section 93 of Public Health Act 1936) to enforce the duty on other land owners to keep clean.
8. Power for local authorities to apply to the magistrates' court if the above notices are not complied with.
9. Power for persons aggrieved to apply to the magistrates' court in respect of nuisance from litter on any land subject to the duty to keep clean, on the model of Section 99 of the 1936 Act.

10. Penalties

- (i) fine in the event of failure to comply with magistrates' order;
  - (ii) mandamus available as last resort in respect of public authorities;
  - (iii) default powers for the local authority to clear other owners' land within scope of the duty and recover their expenses.
11. (Subject to DTp agreement) amend section 22 of the Control of Pollution Act to clarify that district councils have responsibility for cleansing all highways (except motorways) for all purposes.
12. Duty on district councils to have regard to any code of practice approved by the Secretary of State in undertaking the duty to clean highways. Code to be admissible evidence as above.



ENV AFFAIRS : Dec 83

Letter .

CONFIDENTIAL



Prime Minister

## LITTER

*my record at that*

1. At our meeting on 10 April, I was asked to prepare a paper on the options for rationalising and contracting out the various responsibilities for dealing with litter on roads, and to propose a suitable course of action.

2. A detailed discussion of the options and recommendations is set out in the attached note. This minute briefly summarises my proposals.

3. I support Nicholas Ridley's proposal for a new statutory duty on local authorities, supported by a standard for litter clearance. My Department will co-operate with the Tidy Britain Group in their efforts to produce a workable standard.

4. From this August, litter clearance on all roads will be exposed more and more to competition, and will be subject to enforceable contracts under the Local Government Act 1988. But we shall get the full benefit of that only if responsibility is placed on one authority which can be held accountable by the public.

5. I propose that we end the present division of responsibilities for litter on local roads in the Shires, and place responsibility entirely on the District Councils. They already have the major role in public cleansing - including collection and disposal of litter and general refuse - and they are better equipped to discharge the full responsibility. That would link in firmly with the new duty on local authorities, and make it clear to the public precisely who is responsible for clearing up litter.



CONFIDENTIAL



6. I propose that we adopt a similar rationalisation for all-purpose trunk roads. District Councils would become entirely responsible for dealing with litter, including the minor duty of litter clearance for road safety and maintenance that presently falls to me as highway authority. By this means, I should be able to stop local authorities blaming my Department for their own failure to discharge their responsibilities for litter clearance.

7. Motorways are special roads, where the co-ordination of all maintenance work involving lane closures - for example, coning off lanes to deal with litter on central reserves - is essential if I am to keep traffic flowing and maintain safety standards. Consequently, I propose to retain responsibility for all cleansing on motorways, including litter gathering.

8. While all maintenance work, including litter gathering, on my roads - that is, motorways and all-purpose trunk roads - is subject to competition, the management is done through agents. It has been the practice to use local highway authorities for this purpose because the management of trunk roads is best integrated with that of other main roads for which local authorities are responsible: the co-ordination of lane closures for repairs, traffic management and road safety are areas where we would in any case have to rely heavily on local highway authorities. I need to co-operate with these highway authorities so that I can avoid severely disrupting the management of our existing roads and our plans for building new ones.

9. Private contractors are already used for motorways in four metropolitan areas, and this is working reasonably well. I have made it clear to local authority agents that I shall not hesitate to terminate agreements if they are not working up to scratch. At present, the major problem is in London. I intend to commission consultants to examine the way the agency function in general, and contracting out in particular, works in London.

CONFIDENTIAL

CONFIDENTIAL



I will then consider extending this to other parts of the country wherever there is any suggestion that highway authorities are not carrying out their agency functions efficiently.

10. I am sending copies of this minute and the attached note to Douglas Hurd, Norman Fowler, Nicholas Ridley, John Wakeham, John Major and Sir Robin Butler.

P.C.

PAUL CHANNON

4 May 1989

CONFIDENTIAL



# CONFIDENTIAL

## LITTER ON ROADS

1. This note discusses the options for rationalising responsibilities for dealing with litter on roads and for contracting out, and proposes a course of action.

### CONTRACTING OUT LITTER CLEARANCE

2. Litter. From August the work of clearing litter from all roads, which includes pavements, verges and central reserves, will be progressively exposed to competition and carried out under enforceable contracts. This will bring litter clearance into line with other maintenance work, which we have already exposed progressively to competition by changes in Regulations to require all but the most minor works to be subject to competitive tender. Local authority direct labour organisations compete with the private sector for some of the smaller contracts, and this has produced the lowest prices by increasing the efficiency of private contractors and local authorities. We should get the same result with litter, if we rationalise existing responsibilities and make one authority fully responsible for enforcing contracts to clear litter from roads.

### RESPONSIBILITY ON LOCAL ROADS

3. Responsibility for cleansing on local roads in the Shires is divided between County and District Councils. The Districts have the major responsibility for litter, as part of their duties for cleansing for public health and amenity purposes under the Control of Pollution Act 1974. County Councils, as highway authorities, have responsibility for cleansing for road safety and maintenance purposes.

4. Although Districts have the main responsibility, there is inevitably some overlap with that of the Counties, and potential for confusion. Each authority can blame the other. Responsibility for dealing with all litter should be placed on one authority

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- the Districts. This would link firmly with DoE's proposals for a new duty on local authorities supported by standards for litter clearance, which would then rest squarely on one authority.

5. The duty should be placed on Districts rather than Counties, because Districts are already equipped and better placed to do the work, particularly in urban areas where the problem is worst and where dealing with litter and refuse collection is very much a District Council function. The Audit Commission have recently recommended that Districts should become responsible for all street cleaning on the grounds of efficiency and accountability. Such arrangements have already been introduced in Scotland.

6. The problem of divided responsibilities does not arise in the case of London Boroughs and Metropolitan Districts, because these are both highway and cleansing authorities. The proposed new duty would bear directly on these authorities.

### RESPONSIBILITY ON TRUNK ROADS

7. All purpose trunk roads. Responsibility for litter on these roads is, like local roads, divided. District Councils, Metropolitan Districts and London Boroughs have the major responsibility (under COPA 1974). As the highway authority, DTp has responsibility for cleansing to the extent that is necessary for road safety and maintenance purposes. That responsibility is discharged through agents - County Councils in the Shires, London Boroughs and Metropolitan District Councils. Some local authorities, particularly in London and other metropolitan areas, blame the Department for litter instead of fulfilling their own responsibilities. We must put a stop to this and focus responsibility clearly on one authority.

8. As in the case of local roads, it is proposed that full responsibility should be placed on the main cleansing authorities, rather than on DTp as highway authority. This would again link firmly to DoE's proposed new duty on local authorities. The option of DTp's taking over all cleansing work on trunk roads has been considered, but it would be nonsense for DTp to take on such a wide-ranging duty, involving dealing with litter and refuse

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generated by local residents, shops and businesses. Like local roads, that function is one for District Councils and London Boroughs.

9. The Secretary of State may need to take default powers for highway authorities to enable them to act in an emergency to clear litter posing a threat to road safety. The Secretary of State may also need a reserve power to enable litter on certain high-speed inter-urban trunk roads to be dealt with in the manner proposed below for motorways, in order to preserve adequate control over traffic management and safety. Neither of these powers need detract from the principle of making it clear to the public that District Councils and London Boroughs will be responsible for litter on all roads except motorways and perhaps certain designated high-speed trunk roads.

10. Motorways. Under the law as it stands, DTp have sole responsibility for dealing with litter on motorways. Collecting litter on motorways is a particularly dangerous business for those who do it and for traffic. It sometimes requires coning off lanes, for example to deal with central reserves, and the co-ordination of that with other maintenance work is essential if traffic is to be kept moving and adequate safety preserved. In view of that, DTp should retain direct responsibility for dealing with litter on motorways.

11. DTp discharges its responsibility for litter through agents as part of a wider maintenance management function. In the Shires, the county councils are agents. In the metropolitan areas, the agency function is mainly carried out by district councils and London boroughs, but in four of them private consultants are used. The problem of litter on these roads is not the result of general inactivity by agents. Until we can persuade the public to dispose of litter properly, the answer lies in increasing the frequency of litter clearance. The DTp Code of Practice is being changed and agents are to be given clear instructions to step up their efforts on litter clearance. It will mean spending more money, although some of the increase should be offset by competitive tendering.

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## STANDARDS

12. We support DoE's idea of a standard for cleanliness, and we shall assist the TBG in their endeavours to define a practicable standard. In the meantime, general standards for motorways will continue to be prescribed in terms of the frequency of litter scavenges, which are varied according to the rates at which litter accumulates on different sections of motorways. But that system will be made more responsive by requiring agents to add litter checks to the duties of maintenance inspectors who patrol the motorways, to make sure that sudden large accumulations of rubbish are dealt with promptly.

## CONTRACTING OUT THE AGENCY FUNCTION

13. On trunk roads, the management of litter contracts is part of the much larger maintenance and network management function carried out by agents. We are moving progressively towards more market testing and contracting out of all aspects of the agency function, and not just litter. Indeed, the performance of agents is not, as already indicated, a significant problem in the case of litter, and will be even less so under the proposed rationalised responsibilities.

14. We have had promising results from contracting out the agency function for motorways in four metropolitan areas. This is a new field for private consultants, but as they build up experience they will become increasingly able to offer a satisfactory alternative to local authorities. It has been made clear to local authority agents that agreements will be terminated where they do not perform satisfactorily. London is the one area at present where agency agreements are not working satisfactorily, and certain tasks have already been contracted out. Consultants will be commissioned within the next few weeks to examine the whole agency function in London, and contracting out in particular.

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15. Experience with London will provide pointers for handling other authorities who are not performing satisfactorily. But a progressive approach is essential if we are to avoid causing disruption on the road network. Local highway authorities are used as agents for trunk roads, because management of them must be integrated with that of local roads; traffic management and safety, and the coordination of repairs, are areas where we rely heavily on the cooperation of local highway authorities. Substantial economies of scale are derived from combining some trunk and local road maintenance in single contracts. The cooperation of local authorities is essential in developing plans and routes for new trunk roads and in getting them built.

16. One other important change is planned in support of contracting out. Local authority agency agreements will be reviewed to make them more businesslike and to facilitate market testing. It will then be easier to compare the performance of local authority agents with that of private consultants. It might subsequently be helpful to take this a step further by allowing local authorities to compete with private consultants for agency work. They are prevented from doing so at present by the Local Government Goods and Services Act 1970, which means that there cannot be a direct market test to determine whether contracting out is actually cheaper. The inclusion of local authorities in competitive tendering could also lead to keener prices and better value for money. That has already happened in the case of contracts for actual maintenance works, where local authorities are allowed to compete with private contractors; efficiency has improved generally, and rising prices from the private sector have been held in check by very competitive bids from local authority direct labour organisations. This is a difficult area, but we propose that DoE and DTP officials should examine the possibility of changing the legislation to widen competition.

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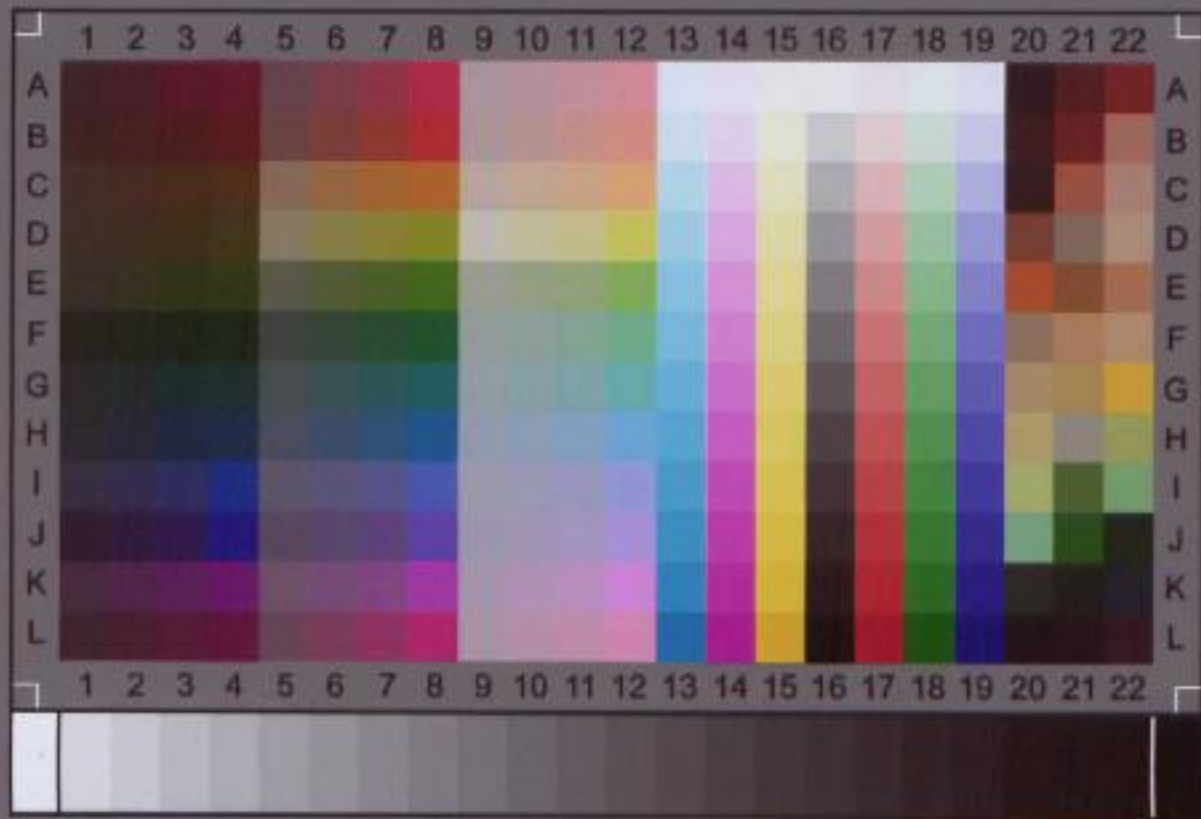


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