Legislation

Disclaimer
This section is a simple overview of the main legal measures and powers available to duty bodies, land managers and the public in maintaining and managing problems related to litter. It must not be seen to be comprehensive, and it does not constitute legal advice. Full legislation is available through www.opsi.gov.uk and a guide to the local environmental legislation available to local authorities can be found at www.idea.gov.uk/knowledge. The guidance that has been produced by Government to accompany recent legislative updates with the publication of the Clean Neighbourhoods and Environment Act 2005 can be viewed at the Defra website http://www.defra.gov.uk/environment/localenv/index.htm. If you wish to take advice or pursue a case, you must seek independent legal advice.

Environmental Protection Act 1990 Part IV (EPA) – Provisions relating to litter
Part IV of the Environmental Protection Act 1990 contains powers and duties to enable certain bodies to manage litter and associated environmental issues on the land for which they are responsible. Under this Act, both duty bodies and citizens are given rights to take legal action to get areas cleaned up. Certain sections of the EPA have been amended under the Clean Neighbourhoods and Environment Act 2005.

Clean Neighbourhoods and Environment Act 2005.
Part 3: Litter and Refuse
Section 18 of the Clean Neighbourhoods and Environment Act 2005 amends section 87 of the Environmental Protection Act 1990 by extending the offence of littering to apply on all types of land, whether public or privately owned, on the land itself or in water. This includes the sea down to the low water mark, making it an offence to drop litter at beaches. The offence of littering is described by the action of dropping or leaving litter, rather than the nature of the litter itself. However the 2005 Act clarifies that small articles such as chewing gum, matchsticks and cigarette ends, are to be classed as litter. People who drop chewing gum can be prosecuted and may be fined as much as £2,500 in a Magistrates Court for this offence. Furthermore, the offence of littering no longer has to cause a defacement of land or water.

The Act does not extend the duty of principal litter authorities. There is no legal requirement on duty bodies to have to remove trodden in chewing gum.
Fixed penalty notices
Under Section 19 of the 2005 Act, Fixed Penalty fines for litter offences are to be increased to £75, unless the principal litter authority sets a different amount locally within a range set by the Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2006 (regulation 2). Section 19 also gives an Authorised Officer a power to require the name and address of the offender and makes it an offence for a person to refuse or give incorrect details. The local authority can keep the receipts from Fixed Penalty Notices to spend in the course of enforcement functions under the EPA. (Keeping receipts had already been introduced under the Local Government Act 1972).

All Parish and Town councils are now classified as Litter Authorities and this has the effect of allowing them to authorise officers to issue Fixed Penalty Notices. (It does not negate the Principal Litter Authority’s statutory duty) From 2006 Litter Authorities can authorise individuals other than their own employees to issue Fixed Penalty Notices.

Litter Clearing Notices
The Act repeals the requirement for designating Litter Control Areas to public land not under control of a local authority, i.e. shopping centres, as these were complicated to administer. Instead section 20 of the 2005 Act allows them to serve Litter Clearing Notices on occupiers of land where it is clear that the land is frequently defaced and that the defacement is detrimental to the amenity of the area. It is an offence not to comply with the Litter Clearing Notice. If by the end of 28 days the land is not cleared of litter and refuse the local authority can clear it and charge the landowners.

Street Litter Control Notices
From 2006 section 21 of the 2005 Act extends the application of Street Litter Control Notices to cover vehicles, stalls and other moveable structures so that mobile vendors are responsible for litter accumulating from their commercial or retail activities. It is an immediate offence so the local authority no longer has to apply to the Magistrates Court for a Compliance Order if they fail to clean up. A person found guilty of this offence may be given a fine of up to a maximum level 4 (£2,500). A new section 94A allows local authorities to offer payment of a fixed penalty as an alternative to prosecution of £100 unless otherwise specified.
Controls on free distribution of printed matter
From 2006 all Litter Authorities can place restrictions on the distribution of free literature by designating areas by Order where the control will apply. Any one wishing to distribute literature will have to apply for permission to do so. Ignorance of the law is not a defence. It is an offence for a person to distribute any free printed matter in such area, or to cause any other person to distribute free printed matter. Charity, religious and political literature is exempt and the control does not apply to literature put through letter-boxes, inside a building or distributed on a public service vehicle. Litter authorities can impose conditions on any consent given and can charge a fee. Anyone committing an offence under this section can be given a Fixed Penalty Notice of £75, unless otherwise specified and may have their materials confiscated by the Authorised Officer.

Meaning of Litter
Section 27 of the 2005 Act clarifies the meaning of litter under part 4 of the EPA to specifically include cigarettes, cigars and like products and discarded chewing gum (including bubble gum). Although these were already considered to fall within the definition of litter, the intention is to provide clarity for practitioners.

Environmental Protection Act 1990 Part IV (EPA) – Provisions relating to litter
Section 87: The Offence of ‘Leaving Litter’
A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place which is open to the air on at least one side. It is immaterial whether the litter is deposited on land or in water.
Describes the offence of littering – that is the leaving of litter in any place, whether private or public, on land or in water, as long as it is open to the air on at least one side. A section 87 offence carries a maximum fine of £2,500 (level 4 on the standard scale).

Section 88: Fixed Penalty Fine for Littering
Alternatively a person who commits a litter offence can discharge their liability to proceedings by the payment of a Fixed Penalty Notice. The offender may be entitled to pay a discounted amount if the Notice is paid within 14 days. However failure to pay within 28 days will result in a court prosecution. It is an offence to fail to give true and correct details to an Authorised Officer. An amount of £75 has been set for a litter offence but this may be set at a different amount by the Principal Litter Authority. Police, PCSOs, “Accredited Persons” and Authorised Officers of Town and Parish Councils can issue Fixed Penalty Notices for litter offences.
**Section 89: Duty to Keep Land and Highways Clear of Litter**

This section sets out the legal duty to clear litter, detritus and refuse (including dog faeces) from relevant land and highways. The duty is placed upon local authorities, educational institutions, designated statutory undertakers and other duty bodies.

**Code of Practice on Litter and Refuse**

Certain bodies are responsible for keeping 'relevant land' (see below for definition) clear of litter, detritus and refuse, so far as practicably possible. These are mainly local authorities, statutory undertakers (e.g. transport operators, port authorities and airport authorities) and schools, colleges and universities. Issued under section 89 of the Environmental Protection Act 1990, the Code of Practice on Litter and Refuse defines the prescribed standards of cleanliness, and sets response times for carrying out the duty according to the type and use of that land.

The local authority and other duty bodies have a legal duty to clear refuse and litter from relevant land for which they are responsible, such as streets, parks, playgrounds, tourist beaches and pedestrianised areas. Certain bodies also have a duty to cleanse highways. Schools, colleges and universities have a legal duty to clear litter and refuse from their own land. The Code gives practical advice for how to monitor and manage different types of land and the range of impacts that can lead to depositions of litter at different times. The emphasis is on the consistent and appropriate management of an area, to keep that area to an acceptable standard of cleanliness – it is not about how often it is cleaned.

The Duty relates to relevant land:

- Land which is open to the air on at least one side;
- Land which is under the direct control of the relevant duty body;
- Land to which the public is permitted or entitled to have access;
- In the case of railway land, relevant land also includes areas of land to which the public is not permitted or entitled to have access, such as track and track sides near stations and in urban areas.

The Duty relates to relevant land belonging to:

- Principal Litter Authorities (county councils, district councils and including unitary authorities, London Boroughs and the Council of the Isles of Scilly);
- Crown Authorities;
- Designated Statutory Undertakers (e.g. transport operators, canal, port and dock operators);
Following a process of research and consultation overseen by a representative advisory group, a revised Code will be launched in 2006 that will apply to England only. The current Code, first published in 1991, and updated in 1999, can be viewed at: http://www.defra.gov.uk/environment/localenv/litter/code/index.htm.

For more information about the Code of Practice on Litter and Refuse revision and consultation see: http://www.defra.gov.uk/environment/localenv/index.htm

Section 91: Summary Proceedings by Persons Aggrieved by Litter
This enables members of the public to apply to the magistrates’ court for a Litter Abatement Order to get an area that is under the control of a duty body cleared of litter and refuse. A complainant must have a genuine interest in the area as a resident, a worker or a regular visitor in the area, and be aggrieved by the fact that the area consistently falls below the acceptable standard for longer than is allowed. If the case is successful, the Magistrate can order that the land be cleared of litter and refuse. However non-compliance by the duty body responsible can lead to a maximum fine of up to £2,500, plus a daily fine of one twentieth of that sum.

Section 92: Summary Proceedings by Litter Authorities
- Local authorities can serve a Litter Abatement Notice against owners or occupiers of certain types of relevant land that is defaced by litter, or if defacement is likely to recur. A Litter Abatement Notice may specify either, or both, of the following: A requirement for the litter or refuse to be cleared within a certain time. In specifying a time period, local authorities should take into consideration the response times and guidance provided in the Code of Practice on Litter and Refuse for the type of land and litter in question.
- A prohibition on permitting the land to become defaced by litter and refuse.

It is an offence for someone ‘without reasonable excuse’ to fail to comply with the requirement or prohibition specified in the notice, punishable by a maximum fine at level 4 (£2,500), together with a further fine of £125 a day for each day that the offence continues after conviction (subsections (6) and (7)).
Sections 93 & 94: Street Litter Control Notices

Local authorities can require owners or occupiers of certain types of commercial premises to prevent or remove accumulations of litter or refuse in streets and adjacent open land, where litter is related to their activities. Failure to comply with a Street Litter Control Notice is an offence. A person found guilty of this offence may be given a fine of up to a maximum level 4 (£2,500). A new section 94A allows local authorities to offer payment of a fixed penalty as an alternative to prosecution.

For the full Act go to:

For more information on the Clean Neighbourhoods and Environment Act 2005 and the Government guidance published to accompany the legislation see:
http://www.defra.gov.uk/environment/localenv/index.htm

Government Responses to the Issue of Gum Deposition
Code of Practice on Litter & Refuse (COPL&R) Consultation

The Department for Environment, Food and Rural Affairs (Defra) and the Scottish Executive have both asked ENCAMS to conduct separate reviews of the Code of Practice on Litter and Refuse according to national priorities, and to consult with the duty bodies who have a responsibility under the Code, in order to find out their opinions on it and suggest improvements.

In the English review, local authorities were one of the first duty bodies to be contacted by ENCAMS. A letter was sent to the Chief Executives of all local authorities in England, requesting volunteers to attend one of eight focus groups. The LA representatives who attended the groups were required to have a working knowledge of COPL&R and BV199, and be of a senior status (e.g. a Manager or Director if possible). The views to come out of the focus groups have been detailed in the research section. Elected members were also consulted separately.

There was a general consensus that the Code of Practice on Litter & Refuse (COPL&R) should be revised to include new guidance, timescales and levels of cleanliness required for chewing gum removal. Examples of solutions given in the responses ranged from ‘zero tolerance’ in city centres to annual cleansing in other areas. Another suggested approach would be to zone areas according to the level of cleansing required, much like the existing COPL&R guidelines for litter. Methods of cleansing ranged from authority to authority, however it was felt that high-powered steam cleansing provided the most effective method of removal. Some London boroughs already consider chewing
gum as litter and cleanse to a level of cleanliness, albeit at a great cost. The revised code is due to be released in early 2006.

Due to the high level of costs associated with chewing gum removal there was a clear desire to see the manufacturer contributing to the cost of clearance through a national education campaign as a preventative measure or in some other way. It was felt that an increase in education and preventative measures could be facilitated through Business Improvement District pilots (BIDs). A separate section within this Knowledge Bank details the work that the Gum Action Group has carried out.