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27 March 2026

Case Reference IESS.24.033 – Highway Litter (A1) – Decision Outcome

Dear ██████████,

Thank you for submitting your representation to Environmental Standards Scotland (ESS) concerning the persistence of litter along the A1 trunk road. I have understood the key points raised in your representation to be:

- Berwickshire Anti-Litter Group (BAG) has undertaken substantial litter-picking activity on the A1 in recent years, recovering significant volumes of litter which you consider indicative of systemic failings
- you believe that Scottish Ministers, Transport Scotland and relevant local authorities are not meeting their statutory responsibilities to keep the road and surrounding land clear of litter “so far as is practicable” under Section 89(1) of the Environmental Protection Act 1990 (“EPA”)
- you consider that the absence of enforcement action, particularly for littering from vehicles and unsecured loads, demonstrates a failure by public bodies to implement environmental law effectively
- you also expressed concern about a perceived gap between national anti-litter strategies and on-the-ground delivery, including the suspension of Scotland’s Deposit Return Scheme
- the outcome sought was for ESS to investigate what action is being taken to implement and enforce relevant litter legislation and to ensure that the statutory duties placed on public authorities are being met

I can confirm that I have considered the information you provided, together with the findings obtained from ESS’ pre-investigation enquiries, summarised below:

Relevant Public Authorities Position

ESS sought information from Transport Scotland (and their operating company BEAR Scotland), Scottish Borders Council (SBC), East Lothian Council (ELC) and the City of

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Edinburgh Council (CEC) to understand how each body is meeting its duties under Section 89(1) of the EPA and the Code of Practice on Litter and Refuse (“CoPLAR”).

Across all four bodies, the following key information was provided and analysed:

Zoning of the A1

- all authorities confirmed that the A1 is allocated Zone 6, consistent with CoPLAR guidance for roads with speed limits above 40 mph
- none of the authorities have undertaken a formal review of this zoning, stating that the circumstances on the route have not changed
- CEC is the only authority that publishes zoning information online

Monitoring and Maintenance

All bodies confirmed that a monitoring regime is in place, with frequency and approach tailored to their operational circumstances:

- **Transport Scotland / BEAR Scotland** reported twice-weekly safety inspections, weekly performance inspections, and 25 recorded instances since 2020 in which litter conditions did not meet CoPLAR standards
- **Scottish Borders Council** carries out fortnightly verge monitoring and three-times-weekly layby inspections. SBC highlighted that achieving CoPLAR Grade A on a high-speed dual carriageway is often not practicable due to the need for costly and disruptive traffic management to access the verges and central reservation safely
- **East Lothian Council** undertakes daily layby checks and annual verge clearance, with lane closures required for safe access
- **City of Edinburgh Council** conducts fortnightly monitoring of its short section of the A1 and reported no failures to meet required response times

Operational and Safety Constraints

All authorities reported significant challenges in maintaining Grade A conditions on the A1 corridor due to:

- the need for traffic management to allow safe access to the carriageway and verges
- staff safety risks associated with high-speed road environments
- the operational disruption and resource implications associated with frequent closures

Additional Measures Taken

Each authority also described wider activity undertaken to reduce litter and improve management along the A1, including:

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- joint litter-picking operations coordinated between Transport Scotland, BEAR Scotland and local authorities
- engagement with waste facilities, local schools, haulage contractors, and community groups
- preventative work such as improved bin design, public engagement and targeted campaigns
- collaborative working through the A1 Litter Coordination Group
- in particular SBC recognised the scale of the challenge to address littering along the A1 and had recruited a dedicated service manager to co-ordinate and implement measures specifically to the A1

Overall Position

ESS noted that each authority provided an open account of their activity and willingness to share information, even when this indicated that CoPLAR standards were not always met.

While acknowledging persistent littering along the route, none of the authorities indicated that they were failing to meet their statutory duties so far as is reasonably practicable. Each authority outlined monitoring arrangements, clearance operations and preventative activity that demonstrates active management within the constraints of safety, resources and traffic-management requirements.

ESS' Findings

1. Compliance with EPA and the CoPLAR

The statutory duties under Section 89 of the EPA 1990 require relevant public bodies to keep land clear of litter “so far as is practicable”, and to “have regard to” the CoPLAR when doing so. The CoPLAR therefore explicitly recognises practicability as a factor and that the duties themselves afford flexibility in their implementation. Public bodies may take diverse approaches to meet the CoPLAR, for example by choosing to invest in education and litter-reduction strategies.

In assessing whether there is evidence of non-compliance or systemic ineffectiveness, I have considered the interpretation of the “reasonably practicable” standard as articulated in a similar case¹. The court in that case found that it was legitimate for relevant public bodies to take factors such as cost, resourcing, traffic management constraints and staff safety into account in considering the issue of practicability of actions which can be taken on high speed trunk roads.

¹ ABE-B298-18 Sheriffdom of Grampian, Highland and Islands at Aberdeen [2019] SC ABE 10, 2018 WL 07350352 Judgment of Sheriff Andrew Miller Aberdeen, 31 October 2018

The information provided by the four public authorities is consistent with this approach. While each authority acknowledged significant challenges in maintaining Grade A conditions on a fast-moving trunk-road corridor, all reported that they maintain monitoring regimes, undertake clearance operations and apply preventative measures. ESS considers the actions of the public authorities do not indicate a failure to meet the requirement to keep land free from litter **as far as is practicable**, in line with the factors expressed within the judgement.

The language of the CoPLAR and requirement to “have regard to it” allows for scrutiny of the response by public bodies to littering; where public authorities depart from the requirements of it, clear justification must be provided. The CoPLAR allows for public bodies to determine their own approach to littering, and those public bodies along the A1 have adopted strategies and mechanisms to periodically clear the highway, verges and laybys “as far as reasonably practicable”. The evidence available does not suggest that the relevant public bodies are failing to have regard to the COPLAR.

Where it can be identified that any failure of regulatory function has occurred, for example failure to remove items of litter within the specified timescale, an alternative form of recourse may be available via the Scottish Public Services Ombudsman (SPSO). I note that complaints in this connection have been considered and upheld by the SPSO², therefore you may wish to pursue any similar complaint about relevant public bodies in respect of the A1 with the SPSO.

2. Enforcement Action

The Circular Economy (Scotland) Act 2024 (“the 2024 Act”) has been introduced since the submission of your representation. The Policy Memorandum to the 2024 Act sets out the intention to create a sustainable circular economy, change societal practices, increase at source litter reduction solutions and end “throwaway culture”. The 2024 Act introduces a range of new measures and enforcement powers in recognition of the previous challenges in enforcing littering.

Issue	Previous legislation	Circular Economy Act 2024
Littering from a vehicle	No specific civil penalty for littering from vehicles; enforcement generally required evidence identifying the individual who committed the offence.	Introduces a civil penalty that may be issued to the vehicle’s registered keeper (new Section 88C), addressing situations where the individual who

² [Decision Report 201609191 | Glasgow City Council | SPSO](#)

Issue	Previous legislation	Circular Economy Act 2024
		discarded the litter cannot readily be identified.
Fly tipping penalties	Fixed Penalty Notice (FPN) available, with a maximum penalty of £500.	Maximum Fixed Penalty Notice (FPN) increased to £1,000.
Householder duty of care failures	Primarily addressed through criminal enforcement; no dedicated civil-penalty mechanism for householders.	Creates a specific criminal offence for householders who breach the duty of care and enables civil penalties to be used for breaches, providing an alternative to prosecution in appropriate cases.
Waste crime enforcement powers	More limited vehicle-related powers, making it difficult to take action quickly where vehicles are used in waste crime.	Extends enforcement powers, including powers to stop, search and (where appropriate) seize vehicles used in connection with waste crime.
Charges for supply of single use items	Limited powers available for reducing availability of single use items	Allows for additional Regulations to be made to introduce charges for certain single use packaging items.

A further at-source measure to reduce the volume of non-recyclable items is the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 (“2021 Regulations”). These regulations ban the manufacture and/or supply of certain items, such as single use plastic cutlery, straws, beverage stirrers and single-use expanded polystyrene beverage/food containers.

These expanded measures provide a pathway for the closure of the enforcement gap identified in your representation. For example, where the inability to identify individual litterers was previously a barrier to enforcement, this can now be resolved in many cases by the penalty applying to the registered keeper of vehicles linked to items of litter. As these measures are still at an early stage of implementation, it is premature for ESS to intervene on their effectiveness at this time.

3. Deposit Return Scheme

Your representation noted the currently paused Deposit Return Scheme (DRS) in Scotland as an additional wider measure to reduce littering and linked the inability to implement it as a reason why single use items end up as litter. The DRS was intended to introduce a charge

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on single use drink containers which would be refunded upon return. Across Europe, these schemes are very successful, with reported return rates above 90% across Scandinavia³.

It is ESS' understanding that implementation of the DRS was paused to align with similar schemes in development across the UK. The latest timeline for DRS across the UK is October 2027. Until the wider UK DRS are implemented in law, ESS is unable to consider the effectiveness of it in Scotland.

Conclusion

For the following reasons, no action will be taken currently by ESS in respect of your representation:

1. ESS has not identified evidence to suggest that the relevant Scottish public authorities are failing to comply with their statutory duties under Section 89 of the EPA and CoPLAR in respect of litter on the A1. Each authority has reported that it is undertaking litter-management activities which reflect what is reasonably practicable within their operational and safety constraints.
2. Environmental legislation applying to littering has recently been introduced in Scotland, in the form of the 2024 Act. This legislation is intended to overcome the barriers to enforcement not available in the EPA. The 2021 Regulations regarding single use plastics are an additional measure to address plastic waste pollution. Given the recent introduction of the new tools, it is premature for ESS to test the effectiveness of the recent legislation. ESS would welcome any information BAG could offer after the new powers are fully established and operational.
3. The concerns raised regarding the suspension of the DRS do not indicate a failure of statutory duties relevant to Section 89. ESS has noted that the DRS may impact significantly on the volumes of discarded recyclable items and will await developments regarding its implementation.

Whilst an individual enquiry or representation may not be taken forward to full investigation, ESS records all representations and enquiries received to identify longer term trends and themes. The information you have provided will therefore contribute to ESS' wider monitoring functions.

Should you be able to provide further evidence on this issue in the future, or if you have any queries regarding the above, please do not hesitate to contact me.

Yours sincerely

³ [Palpa](#) (Finland) – total 97% in 2023 [TOMRA/Infinitum](#) (Norway) – 92.3% in 2023 [Dansk Retursystem](#) (Denmark) – 92% returned



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