



Department of the
Environment

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ENVIRONMENTAL POLICY DIVISION

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND) 2011

CODE OF PRACTICE ON LITTER

GUIDANCE ON LITTER

PREVENTING CIGARETTE LITTER

***REGULATORY IMPACT ASSESSMENT
ON EXTENSION OF STREET LITTER
CONTROL NOTICES***

A CONSULTATION PAPER

CLOSING DATE – 30th September 2011

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RESPONDING TO THIS CONSULTATION

Information about this publication and further copies are available from the address below. This document is also available on the DOE website¹ and can also be made available in other formats. Please contact the Department to discuss your needs.

How to Respond

Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent. The Department will acknowledge receipt of each response.

Please send your responses to:

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The closing date for responses is 30th September 2011

¹ http://www.doeni.gov.uk/clean_neighbourhoods.htm

Publication of Responses

In line with the Department's policy of openness, at the end of the consultation period copies of the responses received may be made publicly available, upon request, from the Department. The information they contain may also be published in a summary of responses.

The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response please read the paragraphs below on the confidentiality of consultations which provide guidance on the legal position concerning any information provided by you in response to this consultation.

If you do not consent to this, you must clearly request that your response is treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which the Department will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000² and the Environmental Information Regulations 2004³.

Freedom of Information Act 2000

The Freedom of Information Act gives the public a right of access to any information held by a public authority, in this case, the Department. This right of access to information includes information provided in response to a consultation exercise. The Department cannot automatically consider as confidential information supplied to it in the course of a consultation exercise. However, the Department does have a responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to this consultation will not be treated as confidential, except in very

² <http://www.legislation.gov.uk/ukpga/2000/36/contents>

³ <http://www.legislation.gov.uk/uksi/2004/3391/contents/made>

particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act⁴ provides that:

- (a) The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- (b) The Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature;
- (c) Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office.⁵

Equality Issues

Under section 75 of the Northern Ireland Act 1998⁶, public authorities have a statutory duty to promote equality of opportunity. We have completed an equality screening of the proposals and have concluded that they do not impact on equality of opportunity on any of the groups specified in section 75. A summary of the screening paper is attached as Annex E and the full screening paper will be posted on the DOE Equality Unit website⁷.

The Equality Commission will receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission might have.

Human Rights Issues

The Human Rights Act 1998⁸ implements the European Convention on Human Rights. The 1998 Act makes it unlawful for any public authority to act in a way that is incompatible with these

⁴ <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

⁵ <http://www.ico.gov.uk>

⁶ <http://www.legislation.gov.uk/ukpga/1998/47/contents>

⁷ http://www.doeni.gov.uk/index/information/equality_unit.htm

⁸ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

rights. We believe that the proposals in this consultation document are compatible with the Human Rights Act, but would welcome any views that you might have.

The Human Rights Commission will receive a copy of the consultation document as part of this consultation. We will take into account any comments that the Commission might have.

Regulatory Impact Assessment

A Regulatory Impact Assessment (RIA) on the Clean Neighbourhoods and Environment Bill (Northern Ireland) can be accessed on the Department's website⁹. A separate RIA has been produced for the Street Litter Control Notices Regulations and is attached at Annex D.

Rural Proofing

It is Government policy that all Government Departments and Agencies intending to introduce a new policy should subject that policy to rural proofing. Annex F sets out the likely effects of the proposals.

⁹ http://www.doeni.gov.uk/pdf_version_of_clean_neighbourhoods_consultation_document.pdf
(pp. 134-158)

INTRODUCTION

The Department published a consultation document on the draft Clean Neighbourhoods and Environment Bill (Northern Ireland) on 1 March 2010. The consultation closed on 23 April 2010.

The Bill was passed by the Northern Ireland Assembly on 14 March 2011 and received Royal Assent on the 4th May 2011.

The Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 strengthens the legislative powers available to district councils to help them deal more effectively with a range of local environmental quality problems such as dog fouling, litter, graffiti and fly posting, nuisance parking, abandoned vehicles, statutory nuisance and noise. **It is the Department's intention to bring the Act into operation in April 2012.**

Before the Act comes into operation it will be underpinned by subordinate legislation and the Department will also be issuing a series of guidance notes to assist district councils and others to understand, and, where appropriate, make use of the new powers. This document contains this guidance in draft form in so far as it relates to litter, together with draft regulations implementing provisions relating to Street Litter Control Orders under Part 3 of the Act.

We welcome views on any aspect of the guidance or regulations but there are specific questions asked throughout the document to which your response would be appreciated. It would be helpful if responses could refer to the specific questions/paragraph number on which comments are being made.

CONSULTATION ISSUES

Note: It is intended to commence the new litter control arrangements in April 2012.

Code of Practice on Litter

The Code of Practice on Litter can be found in **Annex A** to this document.

Article 7(1) of the Litter (Northern Ireland) Order 1994 (the 1994 Order) places a duty on certain bodies to ensure that the land or roads (or land for which they are responsible) is, so far as is practicable, kept clear of litter.

Article 7(2) places a further duty on the Department for Regional Development, in respect of any road which is not a relevant road, (e.g. motorways and a few other similar public highways), and on district councils in respect of any relevant road for which it is responsible (e.g. all other publicly maintainable roads in their district), to ensure that the road is so far as is practicable, kept clean.

This is in addition to the Article 7(1) requirement and therefore means removal of detritus as well as litter. The removal of detritus is deemed to be practicable from metalled surfaces only. It is recommended, but not a duty, that detritus is also removed from other hard surfaces.

Q1 Do you have any comments on the draft Code of Practice on Litter?

Guidance on Litter

The Guidance on Litter document can be found in **Annex B** to this document. It covers:

- Offence of leaving litter, prosecution and fixed penalties (Articles 3 & 6 of the 1994 Order);
- Duty to keep land and roads clear and clean (Article 7 incorporating Article 2 definitions);
- Making a complaint about litter – Litter Abatement Orders (Article 11);
- Enforcing the requirement for duty bodies to keep land clear of litter – Litter Abatement Notices (Article 12);
- Power to require the clearance of litter from other land areas – Litter Clearing Notices (Articles 12A-12C);
- Dealing with street litter outside premises (Article 13 & 14);
- Fixed Penalty Notices: Litter Clearing Notices and Street Litter Control Notices (Article 14A);
- Controlling the distribution of free literature (Article 14B & Schedule 1A);
- Public registers (Article 15);
- Access to property: health and liability issues;
- Abandoned Shopping and Luggage Trolleys;

Q2 Do you have any comments on the draft Guidance on Litter document?

Q3 Do you have any comments on the restrictions on the hand out of free literature?

Guidance on Preventing Cigarette Litter

The Guidance on Preventing Cigarette Litter document can be found in **Annex C** to this document. It covers:

- Ashtrays – choose the right ashtray to suit your context and needs;

- Signage – provide clear, consistent anti-littering signage;
- Cleansing – clean up littered cigarette ends;
- Partnerships – work with local organisations;
- Leadership – walk the talk and be a leader in your community;
- Educate – change the cigarette littering behaviour of smokers; and
- Enforcement – use the legislation and powers available where appropriate.

Q3 Do you have any comments on the draft Preventing Cigarette Litter document?

Regulatory Impact Assessment on Extension of Street Litter Control Notices

The Regulatory Impact Assessment on Extension of Street Litter Control Notices can be found in **Annex D** to this document. It covers the Amendment of Articles 13 and 14 of the Litter (Northern Ireland) Order 1994 (1994 No. 1896 (NI.10)) (the 1994 Order) and the Street Litter Control Notices Order (Northern Ireland) 1995 (S.R. 1995 No. 42). Also attached is a draft Street Litter Control Notices (Amendment) Order (Northern Ireland) 2011 to give effect to the extension of Street Litter Control Notices.

The objective of this proposal is to reduce litter on the streets and therefore help in the creation and maintenance of clean, safe and green neighbourhoods and public spaces.

Whilst it is important that the right tools and guidance are available, the Department also recognises that a key element of achieving this outcome is to effect behavioural change and

promote individual responsibility. The Department has funded the environmental organisation Tidy Northern Ireland to carry out awareness-raising campaigns, and to support the Department in developing specific initiatives to help tackle particularly problematic local environmental quality issues.

In order to ensure that such campaigns and issues are appropriately targeted and resources allocated to best effect, the condition of Northern Ireland's streets and public spaces is monitored through an annual Litter survey conducted by TIDY Northern Ireland. In the Litter Survey conducted in 2010 Tidy Northern Ireland found that cigarette litter was Northern Ireland's most common form of litter, with 80% of surveyed transects containing cigarette butts or packaging. Confectionery litter and chewing gum is the second most common form of litter found on our streets, being found on 58% of transects. Takeaway packaging and drinks related items also form a significant proportion of litter, as does non-packaging litter, which includes items such as tissues, parking tickets, scratch cards etc. Dog Fouling is often regarded as the most abhorrent form of littering, 14% of transects were found to be polluted.

Q4 Do you have any other comments on the draft Regulatory Impact Assessment or the draft Regulations?

CODE OF PRACTICE ON LITTER

**This Code of Practice on Litter is issued
under Article 9 of the Litter (Northern
Ireland) Order 1994**

Department of the Environment

Introduction

1.0 Code of Practice on Litter

1.1 The Litter (Northern Ireland) Order 1994 (referred to throughout this Code as 'the 1994 Order') imposes duties under Article 7(1) and (2) on certain landowners and occupiers (referred to throughout this Code as 'duty bodies') and described in detail at **section 4.1** to keep specified land clear of litter and on district councils and the Department for Regional Development to keep clean the land or roads for which they are responsible.

1.2 This is the second Code of Practice on Litter. The first Code was published in 1994 to accompany the 1994 Order. This Code is issued in replacement of the Code published in 1994, which is hereby withdrawn.

1.3 Where land is defaced by litter and action alleging dereliction of the Article 7 duty is taken in court under Articles 11 and 12 of the 1994 Order, this Code is admissible in evidence in the proceedings. This Code seeks to encourage duty bodies to maintain their land within acceptable cleanliness standards. The emphasis is on the consistent and appropriate management of an area to keep it clean, not on how often it is cleaned.

1.4 It is envisaged that this Code can and should also act as a guide to other managers of land that are not subject to the Article 7 duty, such as registered social landlords and arms-length management organisations in the management of the land for which they are responsible.

2.0 Why you should be interested in this Code

2.1 The quality of the local environment is important to people. Local environmental quality has several dimensions. These include:

- how places look and are perceived;
- how safe and happy people feel about living in an area; and
- how attractive areas are to workers, visitors and existing and new business investors.

2.2 Achieving and sustaining a high local environmental quality is important for all land managers, whether you are a business, a transport operator, a district council, a landlord or an individual householder.

2.3 High local environmental quality helps to:

- secure quality, long term commercial investors;
- attract and retain workers with scarce skills;
- meet landowners' and tenants' legal obligations and liabilities;
- attract good, long-term tenants, minimising voids and repairs costs;
- deter anti-social behaviour and some criminal activities;
- secure the approval of electors, for whom local environmental quality is a fundamental test of an administration's efficiency and effectiveness; and
- create environments that are more easily maintained and less subject to vandalism.

2.4 Your land can contribute to, and is affected by, litter on others' land. Northern Ireland is made up of a patchwork of abutting areas of land owned, tenanted and managed by a myriad of public and private agencies and individuals. Unmanaged litter from your land moves, blows or flows onto the land of others, and theirs onto yours. Through this Code, the Department is encouraging good land management through the awareness of circumstances that will lead to increased litter at particular times.

2.5 Powers are available to require others to clear their land of litter. The Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (referred to throughout this Code as 'the 2011 Act') has extended a range of enforcement powers for district councils to compel businesses, private land owners, occupiers and managers to recognise their role in contributing to the quality and appearance of the local environment.

2.6 The Department encourages the public to take more responsibility. Under the 2011 Act enforcement powers have been extended and widened to help tackle problems such as the leaving of litter, dog fouling and a range of environmental crimes such as

fly-posting, graffiti, abandoned vehicles, nuisance alleyways, noise and statutory nuisance.

2.7 District councils have new powers to serve a Litter Clearing Notice on any land, requiring the occupier, or failing that, the owner, to clear litter from that land. If the notice is not complied with they can enter the land, clean up and then reclaim their costs. Duty bodies may find it helpful to encourage voluntary groups to assist in cleaning areas.

2.8 The 1994 Order gives a person the right (under Article 11) to take legal action to require a duty body to remove litter on its land where this falls below the acceptable standard set out in the Code for longer than the period specified. If the court of summary jurisdiction is satisfied that the duty body is in dereliction of its duty under Article 7, it may make a Litter Abatement Order, requiring the duty body to clean up.

Code of Practice on litter

3.0 What are the duties?

3.1 Article 7(1) of the 1994 Order places a duty on certain bodies **to ensure that the land or roads (or land for which they are responsible) is, so far as is practicable, kept clear of litter** (defined in **section 5.0** below).

3.2 Article 7(2) places a further duty on the Department for Regional Development, in respect of any road which is not a relevant road, (e.g. motorways and a few other similar public highways), and on each district council in respect of any relevant road for which it is responsible (e.g. all other publicly maintainable roads in its district), to ensure that the road is, so far as is practicable, kept clean.

3.3 This is in addition to the Article 7(1) requirement and therefore means removal of detritus as well as litter (all defined in **section 5.0**). The removal of detritus is deemed to be practicable from metalled surfaces only. It is recommended, but not a duty, that detritus (see **section 5.0**) is also removed from other hard surfaces.

3.4 These duties relate to the duty body's relevant land and relevant roads, definitions of which are provided in Article 2(2) of the 1994 Order. Further information on these descriptions is available in the Department's guidance on the 1994 Order, which can be viewed at : www.doeni.gov.uk/

3.5 These duties are not transferable. If a duty body contracts a private company or another agency, for example, a cleansing contractor, to carry out cleansing on its behalf, the duty body remains responsible if the land is not maintained to acceptable standards.

3.6 Previously, the duties also related to relevant land within a Litter Control Area, as defined in Article 10 of the 1994 Order. The 2011 Act repealed this Article and instead a Litter Clearing Notice may be served under Article 12A of the 1994 Order, as amended by the 2011 Act, on any land, requiring the occupier or, if unoccupied, the owner, to clear that land of litter and take steps to prevent its reoccurrence of littering.

4.0 Who do these duties affect?

4.1 These duty bodies affect:

- Crown authorities;
- Designated statutory undertakers;
- Governing bodies of designated educational institutions;
- Each district council as respects any relevant land and any relevant road for which it is responsible; and
- The Department for Regional Development as respect any road which is not a relevant road i.e. motorways and other designated roads;

definitions of which are provided in Article 2(2) of the 1994 Order.

4.2 These definitions are covered in detail in the Department's guidance on the 1994 Order, which can be viewed at: www.doeni.gov.uk/.....

5.0 What comprises litter?

5.1 The 1994 Order provides a comprehensive definition of litter. Article 2(2) defines litter as—

(a) any refuse, filth, garbage or other nauseous, offensive or unsightly waste; or

(b) any waste which is likely to become nauseous, offensive or unsightly.

By virtue of an Order made under Article 2(7), dog faeces are to be treated as litter for the purposes of the 1994 Order.

Note: (Dog fouling is a separate offence from littering.)

The following summarises common definitions used in cleansing contracts and is provided purely as a guide:

5.2 **Litter**, is most commonly assumed to include materials that are improperly discarded and left by members of the public, such as smoking-related materials (cigarette ends, etc); chewing gum and the remains of other products designed for chewing. However, whilst both smoking related materials and chewing gum are litter when they are dropped (i.e. the dropper could be prosecuted under Article 3 of the 1994 Order for leaving litter), the standards in this Code do not apply to trodden-in chewing gum. Duty bodies are not required, therefore, to employ special cleansing methods to remove compacted gum or gum staining over and above normal cleansing regimes.

5.4 **Waste**, is included in the definition of litter in the 1994 Order and has the same meaning as in Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978, i.e.,—

(a) any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process; and

(b) any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled,

but does not include a substance which is an explosive within the meaning of the Explosives Acts 1875 to 1970 or any substance to which Article 3 of the Explosives (Northern Ireland) Order 1972 (1972 NI 3) applies.

As a guideline a single sack of rubbish should usually be considered fly-tipping rather than litter.

5.5 **Detritus**, comprises small, broken down particles of synthetic and natural materials, which arrive at the site through the same displacement effects associated with mechanical, human, animal and natural actions, most of which also determine the distribution of litter. Detritus includes dust, mud, soil, grit, gravel, stones, rotted leaf and vegetable residues, and fragments of twigs, glass, plastic and other finely divided materials. Leaf and blossom falls are to be regarded as detritus once they have substantially lost their structure and have become mushy or fragmented. A significant and avoidable source of detritus is uncollected grass cuttings and weed growth from seeds germinating in moist detritus.

5.6 Large accumulation of detritus, built up over months and years, can contribute to the uncared for impression that an area exudes. Detritus on metalled roads must be removed as a requirement of Article 7 duty to keep land and roads clear and clean and it is also recommended that detritus should be removed alongside litter by duty bodies from all other hard surfaces as well. (See **section 3.0**).

6.0 The principle underpinning this Code

6.1 The quality of the local environment, that is, the appearance of an area, and the way that people perceive it, comes down to good, effective management. In order to know what resources should be deployed and when, accurate and systematic monitoring is needed. This will enable duty bodies to identify when and where the greatest litter problems are likely to occur, and to put into place procedures to ensure that these do not build up and that acceptable standards are maintained. It is good practice to make this information available to the public, for example, through publishing cleansing regimes.

6.2 The Department does not expect that implementation of this Code will demand additional expenditure on the part of a duty body, but believes that better standards can be achieved within the existing levels of expenditure by deploying suitable resources at appropriate times and combining this with education and enforcement.

6.3 Public opinion tends to be shaped by a minority of sites – unsightly niches and areas where litter may be trapped due to the nature of the environment itself. For most responsible bodies, good management is therefore simply about managing the minority of locations for short periods of time, as well as maintaining a consistent overall cleansing strategy. All duty bodies are encouraged to adopt suitable monitoring systems.

6.4 This Code introduces a revised set of recovery times for restoring local environmental standards for litter and detritus, if they fall below the prescribed standard. However, these should be regarded as a last resort as the levels should be maintained above an acceptable standard at all times.

7.0 Grades of cleanliness

7.1 The graded standards shown below are similar to those defined in the first Code of Practice on Litter issued under Article 9 of the 1994 Order.

For litter:

Grade A: No litter

Grade B: Predominantly free of litter apart from some small items

Grade C: Widespread distribution of litter with minor accumulations

Grade D: Heavily affected by litter with significant accumulations

For detritus (to be removed on metalled roads and recommended to be removed on all hard surfaces:

Grade A: No detritus

Grade B: Predominately free of detritus except for some light scattering

Grade C: Widespread distribution of detritus with minor accumulations

Grade D: Heavily affected by detritus with significant accumulations

7.2 These standards may be applied to any site for litter, and, in the case of detritus, to metalled roads and (recommended) all hard surfaces, using the following principles.

Note: Although the nature and characteristics of land may vary the principles on which the litter and detritus are graded remain the same. The photos that follow in paragraph 7.8 demonstrate graphically how these principles appear against different backgrounds.

- **Grade A** means that no litter (or detritus where applicable) is present in the area.
- The presence of even one small item of litter (or small scattering of detritus where applicable) downgrades the environment to a **Grade B**.
- The presence of litter (and/or detritus where applicable) that is significant enough to form a few minor accumulations (**Grade C**) or significant accumulations (**Grade D**) is regarded as unacceptable.

7.3 It is recognised that a **Grade A** cannot be maintained at all times, and the presence of a few small items of litter, not yet accumulating, are regarded by the public as acceptable for short periods of time. It is expected that managers of land should, through monitoring and the appropriate use of resources, keep their land clear of litter so that it does not fall below a Grade B and is cleansed to a **Grade A** on a regular basis. Metalled roads must be free from detritus after cleansing (to a **Grade A**).

7.4 The inclusion of the recommendation that all hard surfaces be cleansed to be free from detritus in this code seeks to ensure that thorough cleansing is carried out on a regular basis. Without this, an area still appears dirty.

7.5 It may not be practicable to remove all litter items from some softer or non-metalled surfaces, such as grass or sand, and in these cases a **Grade B** would be acceptable.

7.6 Where vegetated and metalled surfaces abut without clear kerb edging, for example a grass verge leading onto a rural road, managers should make a judgement as to the definitive edge of the metalled surface. The extent of detritus is then comprised of the amount of encroachment onto the metalled surfaces from this definitive edge. It should be regarded as good practice to cut back any vegetation that encroaches upon a metalled surface, and detritus can be managed with an effective sweeping regime. Although a **Grade A** may not be achievable in every circumstance, it is expected that an acceptable grade (**Grade B**) be achieved on the exposed metalled surface of a road. Mud and skim from flooding are separate issues.

7.7 Managers should be able to predict times or situations that lead to greater fluctuations in likely disposal patterns and prepare for them appropriately. Managers should also consider shaping their monitoring to enable them to respond quickly to potentially dangerous items such as glass or drug needles, or to sensitive areas such as playgrounds.

7.8 Pictorial examples of the grading principles in different settings

Set A: litter in both relevant road and hard surface setting



Grade A
No litter



Grade B
Predominately free of litter apart from some small items



Grade C

Widespread distribution of litter with minor accumulations



Grade D

Heavily affected by litter with significant accumulations

Set B: litter in a soft setting



Grade A

No litter



Grade B

Predominately free of litter apart from some small items



Grade C

Widespread distribution of litter with minor accumulations



Grade D

Heavily affected by litter with significant accumulations

Set C: Principles of detritus grading in a relevant road setting



Grade A
No detritus



Grade B
Predominately free of detritus except for some light scattering



Grade C
Widespread distribution of detritus with minor accumulations



Grade D
Heavily affected by detritus with significant accumulations

8.0 Zones

8.1 The speed and intensity of the accumulation of litter in an area depend on a large number of factors. These can include the levels of pedestrian and vehicular traffic, natural physical features and location, the weather, the time of year, the nature of the surface of the terrain, the structural and physical items that affect the ability to clean, and the nature and condition of the surrounding areas. All of these must be accounted for when analysing the most effective cleansing strategy.

8.2 However, there are two most common features that will have an impact on the levels and frequency of attention that needs to be paid to an area to keep level of litter to acceptable standards. These are:

- the intensity of activity in the area, from people and vehicles; and
- health and safety limitations.

8.3 As such, this revised Code has re-classified the different types of land managed by duty bodies into four main zones, based on these two variables. It is anticipated that these will help to guide duty bodies on the intensity of management required.

- *High* intensity of use (busy public areas)
- *Medium* intensity of use ('everyday' areas including most housing areas occupied by people most of the time)
- *Low intensity* of use (lightly trafficked areas that do not impact upon most people's lives most of the time)
- *Areas with special circumstances* (situations where issues of health and safety and reasonableness and practicability are dominant considerations when undertaking environmental maintenance work).

8.4 Duty bodies should allocate land into one of these four zones and manage it accordingly. **Table 1** below indicates the types of land within each category.

8.5 More detailed descriptions of land uses and accompanying management notes are listed below in **section 11** below.

8.6 If in doubt, categorise a land use into the same zone as the dominant land uses around it. For example, a park located within a housing area should be managed as a medium intensity zone.

8.7 A road would be designated as a high intensity zone whilst running through a primary or secondary retail and commercial centre, a medium intensity zone in the suburbs and a low intensity zone once in the countryside. Hotspots (for example within 200m of entrances of car parking areas) in busy public

parks, that are national tourist attractions located in rural areas, should be classified as high intensity in order to be managed effectively.

8.8 Duty bodies are recommended to publish details of these zones for their land and make them available to the public on request.

8.9 In some cases these land uses may integrate with areas for which other duty bodies have responsibility, such as suburban transport centres, or land adjacent to canals. In these cases, respective zones of responsibility should be clearly defined. Partnership working is recommended as a way to manage such areas.

9.0 Timings

9.1 Duty bodies are expected to set their cleansing schedules so that they meet the duty to keep land clear of litter, and roads clean.

9.2 In some areas, these standards can be effectively maintained during daylight hours. However, in others, longer hours of management are required, for example, in town and city centres. If the standard in high intensity areas should fall to an unacceptable level during the evening, it should be restored to **Grade A** by 8am. Good practice would be that **Grade A** is achieved earlier, by the time the area begins to get busy. This applies to weekends and bank holidays as well as weekdays.

9.3 If, in managing the litter, managers judge it necessary to work outside normal working hours, the duty body should administer a consistent policy to this effect. For example, in areas with a lively night-time economy, or which are obstructed by people or vehicles during the day, it may be far more efficient to carry out daytime operations to manage the levels to acceptable standards and carry out thorough cleansing regimes outside normal working hours.

9.4 As a last resort, if acceptable standards of litter are not met, response times have been set for each of the four categories by which land must be returned to an acceptable standard.

9.5 Duty bodies that allow their land to fall below acceptable standards for longer than the allowed response time may be subject to a Litter Abatement Order (Article 11) or a Litter Abatement Notice (Article 12) issued under the 1994 Order.

Response times:

High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
<p>½ a day</p> <p>This means by 6pm if reported before 1pm or by 1pm the next duty day if reported between 1pm and 6pm on the previous day</p>	<p>1 day</p> <p>This means by 6pm the following evening</p>	<p>14 days</p>	<p>28 days or as soon as reasonably practicable</p>

Table 1 Type of Zone

	High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
Nature of the area	Areas which, through intense pedestrian and/or vehicular movements, are prone to fluctuations in litter and require both high levels of monitoring and frequent cleansing	Areas affected by moderate levels of pedestrian and vehicular activity and therefore less prone to fluctuations in litter usually situated outside centres of retail or commercial activity, but used regularly by members of the public	Areas subject to low or infrequent levels of pedestrian and vehicular activity and therefore less prone to fluctuations in litter often located in more rural areas	Types of land where issues of health and safety and reasonableness and practicability are dominant considerations when undertaking environmental maintenance work (including legislative restrictions for all land types)
Maximum response time to restore to grade A standard if it falls below grade B	½ a day This means by 6pm if reported before 1pm or by 1pm the next duty day if reported between 1pm and 6pm on the	1 day This means by 6pm the following evening	14 days	28 days or as soon as reasonably practicable

	previous day			
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Type of land (duty applies to relevant land/road within these categories- refers to specific guidance in section 11)

	High intensity of use	Medium intensity of use	Low intensity of use	Special circumstances
Retail, office and commercial (see section 11.2)	Primary and secondary retail, office & commercial areas	Primary and secondary retail, office & commercial areas		
Housing land (see section 11.3)		Areas of housing (except those located within primary or secondary retail, office & commercial areas which fall within high intensity areas)		
Industrial areas (see section 11.4)		Industry/ warehousing /retail parks		
Roads (see section 11.5)	Main roads running through the above areas	Main roads running through the above areas	Rural roads running through the above areas Motorway and trunk road roundabouts and lay-bys, approach and	Carriageway, verges and central reservations of motorways and trunk roads

			slip roads connecting to these roads	
Transport interchanges (see section 11.6)	Publicly accessible areas in and around transport interchanges in busy public areas (most likely to be major airports, ports, harbours, bus, train and car parks)	Publicly accessible areas in and around transport interchanges located in these areas (most likely to be suburban and important town harbours, bus, train, car parks and haulage operations)	Public areas in and around transport interchanges located in these areas. Also operational rail land between platforms and within 100m of platforms ends	Operational rail land within urban areas, not covered by other zones
Public open spaces (See section 11.7)	Parks and open spaces located in busy public areas, or with strategic national importance, or parts of other open spaces subject to high intensity of use	Parks and open spaces located in areas as described above, or parts of other open spaces subject to medium intensity of use	Parks and open spaces located in areas as described above, or part of other open spaces subject to low intensity of use	
Educational land (See section 11.8)		Land of designated educational institutions	Land of designated educational institutions	

11.8)		(most commonly schools, colleges and universities), during term-time, other than weekends or half –term holiday	(most commonly schools, colleges and universities), when being used for a purpose authorised by governing body or managers during holidays	
Waterside land (see section 11.9)	Waterside land in areas with high intensity of use	Waterside land in areas with medium intensity of use	All other waterside land	
Beaches (See Section 11.10)				Amenity Beaches should be generally clear of all litter between 1 May and 30 September inclusive. Individual district councils should decide the level of cleanliness that they are able to provide to any non-amenity beaches, and where practicable, beaches must

				be inspected from time to time and cleaned as necessary
Other areas (see section 11.11)	Other busy public areas		All other areas	

9.6 There will be circumstances where, in the interests of responsibility and/or health and safety, managers are required to respond far quicker than the maximum response time. For example, should drugs needles be found on a school playground, or any items of litter are found on an airport runway, it is expected that these objects be removed as a matter of priority, well before the maximum response time. It is recommended that for drug related litter, duty bodies respond within 3 hours of a report.

9.7 When there is an accumulation of material that is potentially hazardous to health (for example waste food), duty bodies should remove this at the earliest practicable opportunity.

9.8 Response times will be subject to overriding requirements, especially in relation to health and safety and traffic management, where the regulations or procedures laid down in the relevant legislation must be adhered to in the first instance.

10.0 Practical issues

10.1 The time periods given in **Table 1** are maximum response times for cleaning an area that has become adversely affected by litter and/or detritus (where applicable).

10.2 The caveat in the litter duty concerning practicability is very important. On some occasions, circumstances may render it impracticable for the body under the duty to discharge it. It is for the courts to agree whether or not it was impracticable for the body under the duty to discharge it. Examples where it may be considered impracticable to clear within duty timescales include:

- When there are severe weather conditions;
- When special events present practical difficulty in meeting the response times;
- Health and safety considerations;
- To avoid damage to sensitive areas (can include natural habitats and heritage sites as well as, for example, the need to preserve forensic evidence at a crime scene);
- Where advance notice is required for traffic management.

10.3 Every effort must be made to clear the land at the earliest opportunity. See **section 11.0** for further information on practicability issues pertaining to each land type/roads.

10.4 The courts should also take into account action taken through other legislation, such as Street Litter Control Notices or Litter Clearing Notices.

11.0 Detailed description of land uses.

11.1 This section provides more detailed descriptions of the types of land referred to in **Table 1** and, where appropriate, specific notes on the discharge of the duty and issues of practicability.

11.2 **Retail, office and commercial areas** – This category includes all city and town centre areas and should include all of the main town and city retail, office and commercial centres as well as busy tourist hot spots outside central areas. It should also include secondary retail, office and commercial areas (that have a frontage of over 50 metres), often located in areas of housing or smaller towns and villages. Out-of-town retail parks and industrial estates are not included in this category (see **section 11.4** below).

11.3 **Housing land** – This category includes all (relevant) land primarily used for housing, with the exception of housing located within busy town and city centres, which should be included within the Retail, Office and Commercial category.

11.4 **Industrial areas** – This category includes land within industrial and warehousing developments, out-of-town retail parks and science parks, as well as the roads running through them. Some large industrial estates have honey-pot sites around a

number of mobile or fixed establishments selling food, or can be known fly-tipping sites that should be managed as a high intensity zone.

11.5 Roads – This category covers certain types of road – motorways, trunk roads, and those defined as main roads and rural roads. Rights of way that are publicly maintainable will fall into the rural roads category. Relevant roads falling outside these definitions should be zoned according to the surrounding land use.

11.5.1 The duty relating to relevant roads under Article 7 of the 1994 Order is that they should also be kept clean, not just clear of litter. In practice, the Code therefore requires the removal of detritus from metalled road surfaces, and recommends its removal from all other hard surfaces. This should be reflected in the cleansing strategy.

11.5.2 Care should always be taken to ensure that debris, detritus and other materials are not left to become a danger to road users by accumulating to; block channels, gullies and cause flooding; encourage weed growth; or become compacted. The seasonal variations in such accumulations should be taken into consideration when formulating cleaning regimes. The difficulty of removing seasonal leaf fall is recognised in the definition of detritus, which only covers leaf fall that has substantially broken down. Extensive deposits of mud and slurry arising from farms, forestry and construction activity may present practicability issues, especially in rural areas, to which the principles in **section 10.0** apply.

11.5.3 Broadly speaking, in accordance with the 1994 Order, as amended, the Department for Regional Development is responsible for ensuring that motorways and specified all-purpose trunk roads are kept litter-free. The responsibility for litter clearance on the rest of the road network lies with the relevant district council.

11.5.4 Main roads and ‘other roads’ including for example dedicated cycle ways, lay-bys, and redundant road infrastructure still accessible to the public, should fall into high or medium intensity zones depending on the surrounding land use. Rural roads and ‘other roads’ in rural areas fall into the low intensity zone.

11.5.5 Sections of motorways and trunk roads where vehicle speeds tend to be lower and traffic less frequent fall into the low intensity zone, namely roundabouts at motorway and trunk road intersections, run-on and run-off roads, and lay-bys on trunk roads. Other areas of motorways may be subject to the following health and safety considerations.

11.5.6 On motorways, where safety issues are paramount, it is recommended that cleansing is always carried out alongside routine maintenance to aid maintenance of standards. The issues of practicability pertaining to motorways are recognised, but examples of good practice in regular operation include the use of moving blocks, or scavenging crews, which have proved to be effective in tackling littered areas. Some areas with slower traffic flows such as on-off roads and roundabouts are often the most littered but are actually easier to manage than areas with less refuge and higher traffic speeds such as central reservation.

11.5.7 In general, managers should identify times at which roads are least busy or obstructed and cleansing should be carried out at these times. This may mean working outside normal working hours.

11.5.8 On roads where high levels of vehicle obstruction occur most of the time, for example, those located within areas of high density housing, appropriate cleansing strategies must be used, for example, manual sweeping.

11.5.9 It should be possible for managers to set up effective cleansing strategies to manage levels of litter above acceptable standards, and carry out thorough cleansing with appropriate equipment, as required, during times with lower levels of traffic flow and/or obstruction.

11.5.10 Article 8(1) requires district councils to place appropriate traffic signs and barriers on roads to warn or regulate traffic when exercising their litter duty. Article 8(2) also requires district councils to comply with any directions from the Department for Regional Development in respect of both the placing of such signs and barriers and of days or periods during which clearing or cleaning must not be undertaken. Additionally, Article 8(2) allows district councils to apply to the Department for Regional

Development asking it to exercise its powers to make temporary traffic regulation orders to restrict or prohibit the use of the road to allow cleaning and the clearance of litter to take place.

11.5.11 In relation to **section 11.5.10** above, district councils will need to liaise with the Department for Regional Development, to identify and agree suitable arrangements. These considerations arise particularly in relation to strategic routes that are subject to continuous heavy traffic flows. Wherever possible, agreement should be reached on the co-ordination of road maintenance and cleansing activities, to help improve efficiency and service standards.

11.6 **Transport Interchanges** - are the interchanges between two or more modes of transport, such as major transport centres, centres including railway stations, bus stations, taxi ranks, ports and airports, as well as any approach roads, landscaped areas, and car parking facilities within them. Non-operational land to which the public has access, such as platforms in railway stations and approach roads and areas, would not normally be expected to be subject to special considerations relating to health and safety. Some health and safety caveats apply to operational railway land, ports and airports, addressed in **section 11.6.4** and **section 11.6.5** below. For more detailed information, please see the Department's Guidance on Litter available from DOE website – www.doeni.gov.uk....

11.6.1 Relevant land in this land use will fall under direct responsibility of duty bodies named under the Litter (Statutory Undertakers) Designation and Relevant Land) Order (Northern Ireland) 1996 (SR 1996 No. 22). The designated statutory undertakers include Northern Ireland Railway Company, Ulsterbus, Citybus, Belfast and Coleraine Harbour Commissioners, Londonderry Port and Harbour Commissioners, Warrenpoint Harbour Commissioners, Larne Harbour Limited, The Northern Ireland Fishery Harbour Authorities, Belfast International Airport Limited, Belfast City Airport and the Northern Ireland Housing Executive.

11.6.2 Relevant land in this category may also fall under the direct responsibility of district councils.

11.6.3 The predominant land use around public transport facilities will determine the cleanliness standards and response times expected of the duty body, in addition to the general level of usage. For instance, a bus station, in a central business district, or a major international airport, would form a high intensity area. A small railway station in a rural area would fall into low intensity zone.

11.6.4 **Issues relating specifically to railway land –**

- Areas of railway land to which the public are permitted to have access, which include station forecourts, platforms and public land adjacent to the station, should not normally be subject to significant health and safety caveats so as to preclude management of litter to acceptable levels.
- Operational land up to 100m beyond the platform ends at railway stations between platforms is subject to a 14 day response time to allow for possible delays due to health and safety considerations. It is felt that this time is sufficient to clear such land, should the levels of litter fall below acceptable levels between regular cleansing cycles.
- It is recognised that operational land within urban areas may be subject to greater health and safety considerations, but duty bodies are expected to combine management of litter with routine track maintenance work so as to avoid significant accumulation of litter. Any significant accumulation should be removed at the earliest opportunity.
- In areas where the origin of litter is external to railway activities, the duty body may consider it appropriate to make clearance arrangements on a partnership basis involving the railway undertaking, district councils and amenity groups.
- Access to railway land is subject to strict controls, and district councils must not under any circumstances enter nor purport to authorise entry by any person. Only the railway undertaker concerned is in a position to authorise entry by persons in possession of appropriate railway safety certification meeting the requirements of undertaker's Railway (Safety Case) Regulations.

11.6.5 **Issues relating specifically to ports and airports -**

- Access to ports and airports is strictly controlled because of the risks to safety and security; in particular, access to the airside at commercial airports and access into restricted areas of ports is subject to stringent security checks. The port authority or airport authority responsible for the site must therefore always be contacted with regard to accessing such land.

11.7 **Public open spaces** - This land use type includes a wide range of open spaces to which the public has access. Sites include parks, picnic sites, and municipal cemeteries.

11.7.1 Public open spaces experience varying levels of patronage, often determined by their location or national/regional reputation. As an example, public open spaces located in intensely used zones should be managed closely as they will be subject to the same fluctuations in pedestrian, and in some cases, vehicular, flows, as the surrounding area. The same rule should be used for the other zones. Some hotspots in the less intensely used open spaces, such as car parks or information points, should be zoned as higher intensity zones in order to manage the likely fluctuations in littering appropriately.

11.7.2 Duty bodies will need to have regard to relevant guidance relating to protected areas such as Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty.

11.8 **Education land** – This duty applies to land in the open air and under the direct control of the governing body of designated education institutions. Broadly speaking, universities, public funded colleges of higher or further education and schools are designated for the purpose of this duty, but for full details see Article 2(2) of the 1994 Order and the Litter (Designated Educational Institutions) Order (Northern Ireland) 1994 (SR 1994 No. 338).

11.8.1 In developing their management strategies, managers should anticipate the changing intensity of use throughout the year, together with the likely impacts of the different users (students, studying during term-time, visiting students, other visitors).

11.8.2 Duty bodies should also take into consideration the impact of their land on the land around it, particularly at key times of the day or year, and seek to work with neighbouring duty bodies to address some of these impacts through awareness-raising or more practical activities. Litter trails from schools to local shops and the impact of residential university students on litter and waste collection in specific areas can significantly increase the management requirements for other duty bodies as well as on education land itself.

11.9 **Waterside land** – This land use includes canal waterways, marinas, inland navigation towpaths and towpaths to which the public have access in urban areas.

11.9.1 Under the Litter (Statutory Undertakers) Designation and Relevant Land) Order (Northern Ireland) 1996 (SR 1996 No. 22) land other than operational land is not to be treated as relevant land of any designated statutory undertaker. Operational land is also defined in the Order.

11.9.2 The growing number of waterside areas located within high intensity of use areas, such as leisure areas comprising bar and restaurant developments, visitor attractions or honey pot sites, are upgraded to a high intensity zone. Likewise, waterside areas experiencing medium intensity of use or located within a medium intensity zone would be zoned as a medium intensity zone. This will enable them to be managed appropriately to address the levels of use and high fluctuations of litter likely to relate, in particular, to the weather and the time of day.

11.9.3 In areas where the origin of litter is external to the activities of the canal or inland navigation undertaking, the duty body may consider it appropriate to make clearance arrangements on a partnership basis involving the undertaking, district councils and amenity groups.

11.9.4 Duty bodies responsible for canals, marinas and towpaths should aim to cleanse hard surfaced areas to a **Grade A** where practicable. A **Grade B** is sufficient as a standard for areas subject of issues of practicability such as access, physical restrictions due to design or nature of the environment, or areas

that are ecologically sensitive where a minimum, if any intervention is required.

11.9.5 Secluded areas such as underneath canal bridges or near waterside buildings are particularly likely to attract individuals taking drugs, and therefore be susceptible to higher levels of drugs litter. It is recommended that canals and related areas should be subject to regular and systematic management and monitoring.

11.10 **Beaches** - duty bodies responsible for beaches include district councils and Crown Authorities.

11.10.1 This land use includes amenity beaches (including inland beaches where substantial number of bathers or beach users may congregate). As a minimum standard, amenity beaches should generally be kept clear of all types of litter between the traditional bathing season of 1st May and 30th September inclusive. It is expected that during this time of the year, beaches be subject to a frequent monitoring routine and be cleansed to as practicable a standard as possible. The Code recognises that a **Grade A** is not always achievable, due to the terrain and conditions in a beach environment. A **Grade B** would be a suitable cleanliness standard under these circumstances.

11.10.2 Due to changing holiday and climatic patterns, beaches are increasingly being used outside of the traditional bathing season. Although the duty does not extend beyond the bathing season, it is recommended as good practice that duty bodies are aware of the different nature of beaches within their area, that they carry out regular monitoring programme of those beaches and develop an appropriate cleansing regime.

11.10.3 By virtue of the Litter (Non-Relevant Land) Order (Northern Ireland) 1995 (SR 1995 No. 184), land below the place to which the tide flows at mean high water springs is not to be treated as relevant land of a district council or as relevant Crown land. Again, it is recommended as good practice that duty bodies are aware of the impact of litter in the inter-tidal area, and where appropriate carry out cleansing.

11.10.4 District councils should identify those beaches for which they have responsibility, which might reasonably be

described as amenity beaches. Any assessment should take into account the level of use of the beach for recreational purposes.

11.10.5 The duty applies to items or materials originating from discharges directly to the marine environment as well as discarded items from beach users. As a guide, only litter comprising manufactured or processed items of materials that have been discarded, disposed of or abandoned, by intent or accident, should be removed. Litter should include processed food items but it does not include seaweed or twigs, which contribute to maintaining the local ecosystem.

11.10.6 There may be issues of practicability relating to litter removal from beaches and particular care will be needed in respect of sensitive habitats.

11.11 **Other areas** - This category represents all other areas of relevant land not classified within any other type of land in paragraphs 11.2 to 11.10.6 above. These areas should be managed according to the intensity of use of the land surrounding them and zoned accordingly.

GUIDANCE ON LITTER

**Guidance on the Litter (Northern Ireland)
Order 1994, as amended by the Clean
Neighbourhoods and Environment Act
(Northern Ireland) 2011**

Department of the Environment

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Overview

This document provides guidance on litter legislation in the Litter (Northern Ireland) Order 1994, as amended by the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011. A copy of the Order, as amended, can be accessed on the Department's website at www.doeni.gov.uk/.....

1. Offence of leaving litter, prosecution and fixed penalties (Articles 3 and 6)

1.1 Under Article 3 of the Litter (Northern Ireland) Order 1994 (the 1994 Order) it is an offence to throw down, drop or otherwise deposit in, into or from any place open to the air, and then leave, litter.

1.2 A person found guilty of the litter offence may be fined up to level 4 on the standard scale (currently £2500) in a court of summary jurisdiction. Article 6 of 1994 Order, as amended by section 16 of the Clean Neighbourhoods and Environment Act (NI) 2011 (the 2011 Act), allows an authorised officer of a district council to issue fixed penalty notices as an alternative to prosecution.

Article 3 (as amended)

1.3 Paragraph (1) states that a person is guilty of an offence if he throws down, drops or otherwise deposits in, into or from any place open to the air and then leaves, anything whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any such place.

1.4 Article 2(2) of the 1994 Order provides a definition of litter which states - any refuse, filth, garbage or any other nauseous, offensive or unsightly waste or any waste which is likely to become nauseous, offensive or unsightly but not animal droppings. This definition is regarded as 'wide' and includes smoking-related litter such as cigarette ends, cigars and like products, and discarded remains of other products designed for chewing such as bubble gum.

1.5 In practice, litter is most commonly assumed to include materials that are discarded and left by members of the public otherwise than in proper receptacles; or are spilt during waste management operations. District councils will need to exercise a degree of judgement in deciding whether larger items and accumulations of discarded material constitute fly-tipping rather than litter - as a guideline, a single sack of rubbish will usually fall outside the scope of Article 3 and should be dealt with accordingly. Further advice on the appropriate use of penalties for litter is given

in the separate guidance available on fixed penalty notices and can be viewed at: www.doeni.gov.uk/.....

1.6 The term 'open to the air' is elaborated in Article 2(6) of the 1994 Order and further explanation is given at 2.4 of this guidance.

1.7 Paragraph (2) states under what circumstances leaving litter is not an offence. It also provides that it shall be a defence for a person charged with an offence of leaving litter to prove that the disposal was authorised by law or done with the consent of the owner or other person or authority having control over the place in which the item of litter was deposited.

1.8 Paragraph (2A) limits the ability of someone to consent under (2) to the depositing of litter in a lake, pond or watercourse. Such consent can only be given by someone who owns or controls all the land adjoining a lake, pond or watercourse that they own or control, and all the land through which the water from the lake, pond or watercourse directly or indirectly discharges, unless this is by means of a public sewer. This provision is intended to ensure that litter dropped into one body of water cannot be carried into another body of water under different ownership or control.

1.9 Paragraph (2B) states that the terms 'watercourse' has the same meaning Article 2(2) of the Drainage (Northern Ireland) Order 1973; and 'public sewer' have the same meanings as in Article 2(2) of the Water and Sewerage Services (Northern Ireland) Order 2006. Accordingly:

'Lake or pond' includes a reservoir of any description.

'watercourse' includes any channel or passage of whatever kind, whether natural or artificial, through which water flows, rivers, streams, canal, ditch, drain, cut, culvert, dyke, sluice, valve, sewer, overland carrier, millrace or layde, except mains or other pipes which –

(a) belong to the Northern Ireland Environment Agency or a water undertaker; or

(b) are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises.

‘Water undertaker’ - Northern Ireland Water (NIW) is the sole water and sewerage undertaker in Northern Ireland providing water and sewerage services to domestic, agricultural and business customers throughout Northern Ireland.

NIW is a Government owned Company and the statutory water and sewerage undertaker, operating under license. It is subject to regulatory oversight by the Northern Ireland Authority for Utility Regulation and environmental regulators.

As owner, the Minister for Regional Development retains overall policy and political oversight.

‘public sewer’ means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme and “private sewer” shall be construed accordingly.

1.10 Paragraph (3) states that a person found guilty of the offence may be liable on summary conviction of up to a level 4 fine (currently £2,500).

1.11 Under paragraph (4) a district council may take steps to advise the public of the penalties for a litter offence so as to promote the abatement of litter. By amending the offence of dropping litter, in the 1994 Order, in relation to a lake, pond or watercourse and setting out what constitutes the offence of leaving litter and under what circumstances leaving litter is not an offence it is the Department’s intention to send out a clear message that the irresponsible disposal of litter anywhere is unacceptable. District councils have an important role to play in informing local residents and visitors of their responsibilities. Ideally, they should also ensure the public are aware of the district councils’ enforcement strategy, and who is policing the law in their area.

Article 5

1.12 This Article deals with the enforcement of Article 3 of the 1994 Order. Paragraph (1) has been amended by section 15 of the 2011 Act to exclude the offence in Article 4 of the 1994 Order of littering by permitting dogs to foul. This offence is dealt with separately in Part 5 of the 2011 Act.

1.13 Paragraph (2) enables an authorised person to require the name and address of a person on whom he proposes to give a fixed penalty notice. This paragraph also provides that the authorised person should produce his credentials if required.

1.14 Paragraphs (3)(a) and (b) and (3A) make it an offence if a person fails to give his name and address or to give a false or inaccurate name or address. If found guilty by a court, that person shall be liable, on summary conviction, to a fine not exceeding level 3 (currently £1,000) on the standard scale.

Article 6

Note: This Article covers the basic principles of fixed penalty notices for litter and outlines amendments to the 1994 Order introduced by the 2011 Act. However, detailed information on their use is provided in the separate guidance available on fixed penalty notices. District councils and authorised officers, are strongly advised to consult this guidance when using the fixed penalty notice provisions.

1.15 Paragraph (1) enables an ‘authorised officer’ of a district council to issue a fixed penalty notice to a person he believes has committed an offence under Article 3.

1.16 Paragraph (2) provides that where a person is given a fixed penalty notice no proceedings may be taken within 14 days of the notice being served, and the person cannot be convicted of the offence if payment of the fixed penalty is made within this time period.

1.17 Paragraphs (3) – (7) deal with the form and content of fixed penalty notices, and procedures for payment.

1.18 Paragraph (6A) introduced by the 2011 Act enables a district council to specify the level of fixed penalty that will apply in its district. This is subject to regulations under Article 18A that may set out the range within which this level must fall. If the district council chooses not to set its own level, a standard default amount of £75 applies.

1.19 Paragraph (7) also introduced by the 2011 Act, enables a district council to offer a discount for early payment of a fixed

penalty. Again the Department may make regulations in connection with this power under Article 18A.

1.20 Paragraph (8) deals with evidence for the receipt of fixed penalty payments.

1.21 Paragraphs (8A) – (D) deal with the Code of Practice on issuing Fixed Penalty Notices.

1.22 Under paragraph (8A) the Department is required to issue a code of practice ‘for the purpose of providing practical guidance on the giving by authorised officers of notices under Article 6. Paragraph 8B requires anyone subject to such a duty to ‘have regard to the code of practice....in determining whether to give a person a notice under this Article’. Paragraphs (8C) and (8D) cover the procedures for making and amending the Code of Practice.

1.23 The 2011 Act makes an amendment extending the definition of ‘authorised officer’ given in paragraph (9). Under the original 1994 legislation it referred only to an authorised officer of a district council i.e. an employee, authorised in writing for the purpose of issuing fixed penalty notices. District councils can now enter into arrangements so as to enable ‘any person’ (or the employee of any such person) to give notices.

2. Duty to keep land and roads clear and clean (Article 7 incorporating Article 2 definitions)

2.1 Article 7 imposes a duty on those bodies responsible for various descriptions of ‘relevant land’ and ‘relevant roads’ (defined in Article 2) to ensure that these are, so far as is practicable, kept clear of litter, and in the case of roads, clean. It also imposes similar duties on the Department for Regional Development in respect of relevant roads (motorways) and trunk roads which are special roads which are the responsibility of that Department.

2.2 Guidance on the extent of these duties, and how they can best be discharged, is contained in the statutory Code of Practice on Litter. This document provides guidance on the bodies and types of land subject to these duties and may be viewed at: www.doeni.gov.uk/.....

2.3 Paragraph (1) states that the duty 'to ensure that the land or road is, so far as is practicable, kept clear of litter applies to:

(a) each district council as respects its relevant land or relevant road for which it is responsible.

Article 2 defines the term 'relevant land' of a district council as land which is open to the air and is land under the direct control of the council to which the public are entitled or permitted to have access with or without payment. Road has the same meaning as in Article 2(2) of the Roads (Northern Ireland) Order 1993 but includes a footway. Article 2(4) states that every road is a 'relevant road' and that each district council is, for the purposes of the Litter Order 'responsible' for so much of any relevant road as lies within the district of the council.

(b) the Department as respects any road which is not a relevant road. In this instance the Department is the Department for Regional Development (DRD) as per the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (1999 No.481). There are also regulations made i.e. (The Litter (Designation of Roads) Order (Northern Ireland) 1994) (1994 No.414), which designate and list roads (mainly motorways) not to be treated as relevant roads for the purposes of the duties imposed under Article 7(1) and (2) of the Litter Order. An additional road (motorway) was added to the list by the Litter (Designation of Roads) (Amendment) Order (NI) 1995 (1995 No.18). The Code of Practice on Litter includes standards for special roads as well as for relevant land and relevant roads.

Crown land is defined in Article 2(2) as land: -

(a) occupied by the Crown Estate Commissioners as part of the Crown Estate,

(b) occupied by or for the purposes of a government department, or

(c) occupied or managed by any body acting on behalf of the Crown

Relevant Crown land means Crown land which is open to the air and is land (but not a road) to which the public are entitled or permitted to have access with or without payment.

(c) Each designated statutory undertaker, as respects its relevant land.

Article 2(2) defines 'relevant land' of a designated statutory undertaker. 'Statutory undertaker' is also defined in Article 2(2) and designated statutory undertakers are listed in an order made by the Department under Article 2(2).

In summary they comprise rail and bus operators (including Ulsterbus and Citybus), anyone authorised to carry out road transport operations (other than taxi and hire car operators), water transport, inland navigation port and harbour operators, airport operators and the Northern Ireland Housing Executive.

Note: Utility companies do not fall within this definition.

Land is relevant land of a designated statutory undertaker if it is under the direct control of a designated statutory undertaker and is land to which the public has access with or without payment. However, the Department may, under Article 2(2), prescribe as relevant land, land to which the public does not have access, and, under Article 2(3), designate types of land, which are not to be treated as relevant land of designated statutory undertakers. These powers have been used:

- To prescribe as relevant land, means land under the direct control of any statutory undertaker designated by the Department, by order, being land to which the public are entitled or permitted to have access with or without payment or, in such cases as may be specified in the designation order, land in relation to which the public have no such right or permission;
- To designate as land not to be treated as relevant Crown land (under Article 2(3));

- land that is not operational land;
- land that is used solely for the provision of freight services; and
- beaches below the high water mark.

(d) The governing body of each designated educational institution as respects its relevant land.

Article 2(2) defines 'relevant land' of a designated education institution. 'Educational institution' is also defined in Article 2(2), and all the institutions listed there have been designated by an order made under Article 2(2). Land is relevant land of a designated educational institution if it is open to air (but see Article 2(6)), and is under the direct control of the institution in question. Under Article 2(3) the Department may designate types of land of designated educational institutions that are not to be treated as their relevant land; this power has not been used in relation to designated educational institutions.

2.4 There are two further provisions in Article 2 which are relevant to the duty in Article 7(1).

- Article 2(6) defines the term 'open to the air'. It states that a place shall be treated as 'open to the air' if it is covered, provided that it is open to the air on at least one side. It is intended that this should apply to any covered place with a significant, permanent opening on at least one side, such as a bus shelter, railway platform or garage forecourt that remains open to the air at all times.
- Article 2(7) enables the Department to apply the provisions of the 1994 Order which apply to litter to any description of animal droppings. The Litter (Dog Faeces) Order 1995 (SR.235/1995) prescribes the places where it will be an offence under Article 4(1) of the 1994 Order for a person to permit a dog in their charge to deposit its excrement.

2.5 Paragraph (2) places a duty on each district council to ensure that relevant roads for which it has responsibility and the Department (DRD) in respect of any road which is not a relevant

road so far as is practicable, kept clean.

2.6 Paragraph (3) states that regard must be paid to the character of relevant land and road, how they are used and what is practicable in the circumstances, in deciding what standard of cleansing will comply with the duties in paragraphs (1) and (2). Detailed guidance on this provision is contained in the Code of Practice on Litter.

2.7 Paragraph (4) gives the Department a power to extend the duty to keep relevant roads clear of litter and clean to matter that would not normally be regarded as litter. This power has not been used.

Article 8

2.8 Paragraphs (1) - (3) cover the exercise by district councils of their responsibilities to clear and clean any relevant road. They must put in place traffic signs and barriers to warn approaching traffic, and comply with any directions given to them by the Department of Regional Development (DRD) about these and about the timing of their cleaning operations. The district council may also apply to DRD for a temporary traffic regulation order under the Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 and give notice prohibiting parking in order to provide cleaning of the land or road. Paragraphs (4) - (10) cover the details of the content of the notice district councils must provide.

Article 9

2.9 Under Article 9 the Department is required to issue a code of practice 'for the purpose of providing practical guidance on the discharge of the duties imposed by Article 7(1) and (2)'. Paragraph (3) requires anyone subject to such a duty to 'have regard to the code of practice....in discharging that duty'. The other paragraphs cover the procedures for making and amending the Code of Practice.

2.10 The Code of Practice on Litter is available from www.doeni.gov.uk/.....

3. Making a complaint about litter - Litter Abatement Orders (Article 11)

3.1 This Article provides for individuals to take action, via a court of summary jurisdiction, against those not complying with the duty to keep land clear of litter or roads clean. If the court concludes that the complaint is well founded, it may issue a Litter Abatement Order requiring the person complained against to clear or clean the land. Failure to comply with a Litter Abatement Order is a criminal offence, punishable by a maximum fine at level 4 (currently £2,500), together with a further fine of one-twentieth of that amount (£125) a day for each day that the offence continues after conviction.

3.2 Persons with a complaint about litter should always bring the matter to the attention of the duty body first, before taking action under Article 11. District Councils and other duty bodies should inform the public about procedures for making a formal complaint, and the right to seek redress in the courts, if the litter duty is not met.)

3.3 By virtue of paragraph (3) district councils are not able to take action under this Article.

3.4 Anyone 'aggrieved by the defacement, by litter', of any of the types of relevant land may complain to a court of summary jurisdiction.

3.5 Anyone 'aggrieved by the want of cleanliness' of any relevant road may take similar action.

3.6 Proceedings under Article 11 must be taken against the person who has the duty to keep the road or land in question clear and clean of litter (paragraph (4)). Under paragraph (5) five days written notice must be given to that person, with details of the complaint, before proceedings are instituted.

3.7 If the court is satisfied that the complaint is justified, it can make a Litter Abatement Order 'requiring the defendant to clear the litter away or, as the case may be, clean the road within a time specified in the Order' (paragraph (6)). The period for compliance is for the court to decide; there is no minimum period in the legislation.

3.8 Anyone who, without reasonable excuse, fails to comply with a Litter Abatement Order commits an offence (paragraph (9)).

3.9 In proceedings on a complaint, or for breach of a Litter Abatement Order, it is a defence for the defendant to prove that he has complied with his statutory duty under Article 7(1) and (2). Article 11(12) states that the Code of Practice on Litter is admissible as evidence, and where relevant must be taken into account. The standards set out in the Code of Practice are therefore likely to be crucial in determining, in the first place whether a defendant is complying with his statutory duty, and if the court considers he is not, and issues a Litter Abatement Order, whether the standard of cleaning is sufficient to comply with the order.

3.10 If the court of summary jurisdiction is satisfied that a complaint is justified, for the reasons set out in paragraph (13), it must require the defendant to pay the reasonable costs incurred by the complainant in making the complaint and bringing the proceedings. It is not necessary for a Litter Abatement Order to be issued; if a defendant is able to show the court that the land in question has been cleared prior to the proceedings, the court will not make an order, but if it is satisfied that the original complaint was justified it can order the complainant's costs to be paid.

4. Enforcing the requirement for duty bodies to keep land clear of litter – Litter Abatement Notices (Article 12)

4.1 Article 12 of the 1994 Order enables district councils to take action where a duty body is failing to keep its relevant land clear of litter. The power to issue a Litter Abatement Notice is available to district councils, and may be used where any relevant Crown land, or land of a designated statutory undertaker, or designated educational institution is defaced by litter, or the defacement is likely to recur. Definitions of these types of 'relevant land' are given in Article 2(2) of the 1994 Order.

4.2 A Litter Abatement Notice may specify either, or both, of the following (paragraph (2)): -

- A requirement for the litter to be cleared within a certain time. In specifying a time period, district council should take into consideration the timings and guidance provided in the Code of Practice on Litter for the type of land and litter in question.
- A prohibition on permitting the land to become defaced by litter.

4.3 The notice must be served on the responsible duty body, namely the appropriate Crown authority, statutory undertaker or governing body of the educational institution. Paragraph (4) provides a person on whom the notice has been served with a right of appeal against it to the court of summary jurisdiction.

4.4 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 (currently £2,500), together with a further fine of one-twentieth of that amount (£125) a day for each day that the offence continues after conviction (paragraphs (6) and (7)).

4.5 In proceedings on an appeal against, or for breach of, a Litter Abatement Notice, it is a defense for the defendant to prove that he has complied with his statutory duty under Article 7(1) (paragraphs (5) and (8) of Article 12). Paragraph (9) states that the Code of Practice on Litter is admissible as evidence, and where relevant must be taken into account. The standards set out in the Code of Practice are therefore likely to be crucial in determining, in the first place, whether a defendant is complying with his statutory duty, and secondly, whether the standard of cleaning is sufficient to comply with the notice.

4.6 District councils also have the power, if a person fails to comply with the notice, to enter the land, clear it of litter, and recover the cost of doing so (paragraph (10)). District councils are only permitted to reclaim the actual costs incurred in carrying out the clearance, and may not be able to reclaim full costs if the person shows that any of the expenditure was unnecessary. Civil proceedings for debt recovery may be brought by the district council against the person if he fails to pay. District councils may not exercise the power in paragraph (10) in respect of relevant Crown land or relevant land of statutory undertakers.

4.7 See section 10 of this guidance for information regarding entry onto land and exclusion of liability.

4.8 A suggested model form for Litter Abatement Notices is provided at Annex A. District councils may wish to use this guide when issuing notices under Article 12.

5. Power to require the clearance of litter from other land areas – Litter Clearing Notices (Article 12 A - 12C)

Note: Article 12A(7) requires district councils to have regard to any guidance issued by the Department in discharging their functions in relation to Litter Clearing Notices.

5.1 Litter Clearing Notices enable district councils to require the occupier (or if the land is unoccupied, the owner) of the land which is defaced by litter to clear it, and, where appropriate, take steps to prevent it from becoming heavily defaced again. Neglected areas of land can attract large amounts of litter, which may be carried into other areas and result in further antisocial behaviour. Articles 12A - 12C, which are inserted into the 1994 Order by section 17 of the 2011 Act, enable this problem to be dealt with.

5.2 Litter Clearing Notices replace the previous system of Litter Control Areas, enforced through Litter Abatement Notices. Article 10 and all other references to Litter Control Areas in the 1994 Order have now been repealed.

5.3 The main features of the new system are: -

- Litter Clearing Notices can be served on all types of land, private as well as public, other than those listed in Article 12A(10);
- Litter Clearing Notices can be served without prior designation of a Litter Control Area, and it is an offence not to comply with a Litter Clearing Notice;
- Fixed penalty notices may be issued as an alternative to prosecution;

- Litter Clearing Notices may specify the standard to which land must be cleared;
- If land is not cleared, or is not cleared satisfactorily, the district council can enter the land, clear it itself and recover the costs of doing so.

General principles

Working in partnership

5.4 Wherever possible, district councils should work in partnership with landowners and occupiers to resolve problems caused by heavily littered land. Before issuing a Litter Clearing Notice, a district council should try to persuade the occupier, or, if there is no occupier, the owner, to clear the land. Only if he fails to do so should a Litter Clearing Notice be issued. A notice should only be served on an owner if there is no occupier. If, however, reasonable efforts to contact the occupier or owner are unsuccessful, or previous experience demonstrates that efforts to persuade him to take action are likely to be ineffective, a Litter Clearing Notice can still be issued.

5.5 In issuing a Litter Clearing Notice district councils should consider the role they can play in helping to address the causes of the litter problem, particularly in specifying steps to be taken to prevent future defacement, for example, the ability to serve a fixed penalty notice on the person(s) responsible for the litter or to seek a prosecution in the court. It may be appropriate to provide more concentrated enforcement activity around the site and to monitor closely any incidents of re-offending. Given the close link between environmental degradation and further acts of anti-social behaviour the district council should work with the occupier or landowner to tackle other local environmental quality issues that may affect the condition of the land, such as abandoned vehicles or graffiti. This is particularly the case where the litter may not be the fault of the occupier, including cases in which the occupier is not physically capable of dealing with the problem. A Litter Clearing Notice should not be used if it appears that the problem has resulted from an accumulation of litter on adjacent district council land that has not been cleared.

Litter Clearing Notices and fly-tipping

5.6 Litter Clearing Notices are intended to be used to deal with accumulations of litter that reduce the quality of the local environment within a neighbourhood; they should not be used to deal with the illegal deposit of waste i.e. fly-tipping.

5.7 Litter Clearing Notices are not a suitable tool where the problem relates to hazardous waste, industrial/commercial dumping or other incidents of illegal waste-tipping that are the main source of degradation in an area. However, there will be occasions when heavily littered areas of land attract low-level fly-tipping or refuse, for example, bin bags containing waste and odd pieces of furniture. In these cases a Litter Clearing Notice remains appropriate. The key test is whether the principal cause of the problem is an accumulation of litter over time as opposed to fly-tipping incidents.

Detailed guidance

Article 12A

5.8 Paragraph (1) empowers a district council to serve a Litter Clearing Notice 'in relation to any land in its district which is open to the air'.

Particular points to note are: -

- The power relates to all types of land, other than those excluded by virtue of paragraph (10) – see paragraph 5.12 below, it therefore applies to private land that is accessible to the public;
- It applies to any land which is 'open to the air'. Article 2(6) provides that covered land is to be regarded as open to the air so long as it remains open to the air on at least on side.

5.9 Paragraph (2) provides that before a notice can be served, a district council has to be satisfied that the land in question **'is defaced by litter so as to be detrimental to the amenity of the locality'**.

5.10 A Litter Clearing Notice can only be served if the land is defaced by litter and this is detrimental to the amenity of the area.

Defacement is a matter of fact, but the impact of defacement on the amenity of the area will depend on a number of factors. 'Amenity' is a broad concept and not formally defined in the legislation or procedural guidance, i.e. it is a matter of fact and degree as well as common sense. Each case will be different and what would be considered amenity in one part of a district council's area might well not be considered so in another. District councils will therefore need to consider the condition of the site, the impact on the surrounding area and the scope of their powers in tackling the problem before they decide to issue a notice. However, Litter Clearing Notices should not be used to require the routine clearing of small amounts of litter on the grounds that the land in question has a particularly high amenity value.

5.11 Paragraphs (3) - (9) deal with the requirements imposed by Litter Clearing Notices and with their service:

- The basic requirement of a Litter Clearing Notice is to clear the land in question of litter (sub-paragraph (3)(a)). Sub-paragraph (5)(b) enables a Litter Clearing Notice to specify standards of compliance, and land should be regarded as cleared of litter if these standards are met. Guidance on appropriate standards of compliance is contained in the Code of Practice on Litter and Annex A explains how these should be applied in relation to Litter Clearing Notices.
- If a district council is satisfied that land on which a Litter Clearing Notice is being served is likely to become defaced by litter again, the Litter Clearing Notice can require reasonable steps to be taken to prevent future defacement of the land (subparagraph (3)(b)).

For example, such steps could include: -

- requiring the occupier or owner to physically secure the land, taking into consideration 'designing out crime' principles;
- monitoring levels of litter;
- undertaking regular clearance;

- the provision of litter bins and appropriate containment of waste.

In determining what is 'reasonable' the district council must take into account the individual circumstances of the case. Consideration must be given to such factors as cost, health and safety, and issues of practicability, in specifying the action that must be taken. For example, the size of the land area affected may preclude the use of physical barriers to control the problem. Similarly, steps specified for a wildlife-sensitive area will need carefully to consider timings and access to the land. The district council should also consider its own role in helping to prevent further littering from taking place (see 'General Principles').

- A Litter Clearing Notice must be served in the first instance on the occupier of the land to which it relates or, if the land is not occupied, on the owner (paragraph (4)).
- Under paragraph (9) if it is not possible 'after reasonable enquiry' to establish the name or proper address of the occupier or owner, district council can serve a Litter Clearing Notice by posting it on the land. The period for compliance with the notice starts from the time it was posted. Details of the owner or occupier may be obtained by on-site enquiries, use of information from the Land Registry.
- A Litter Clearing Notice may (and ideally should) specify, in accordance with sub-paragraph (5)(a) the deadline for compliance. Under paragraph (6) this must be at least 28 days, but may be longer.
- Paragraph (8) allows the Department to specify the form and content of a Litter Clearing Notice. This power has not been exercised, however, Annex B provides a model form for Litter Clearing Notices, which may be used as a guide by district councils.

5.12 Paragraph (10) lists the types of land on which Litter Clearing Notices may not be served. These are:

(a) a road

This includes all such roads, including trunk roads which are special roads;

(b) land under the direct control of a district council

This includes all such land, and is not limited to ‘relevant land’ of a district council;

(c) Crown land

Again, this includes all Crown land, as defined in Article 2(2), and is not limited to ‘relevant Crown land’;

(d) relevant land of a designated statutory undertaker

This is defined in Article 2(2) (see the guidance on Article 7 above). Litter Clearing Notices can be served on other land controlled or occupied by a designated statutory undertaker;

(e) relevant land of a designated educational institution

This is defined in Article 2(2) (see the guidance on Article 7 above), but again, Litter Clearing Notices can be served on other land controlled or occupied by a designated educational institution;

Article 12B

5.13 This Article provides an appeal mechanism for a person on whom a Litter Clearing Notice is served. Such an appeal should be made to a court of summary jurisdiction within 21 days of the notice being served on the occupier/owner, or, where the occupier is unknown, posted on the land in question.

5.14 Paragraph (3) sets out the grounds on which an appeal may be made. In considering an appeal in relation to the effect on the amenity of the locality, regard should be had to the guidance on ‘amenity’ at paragraph 5.10 above, and, in relation to the action required being ‘unfair or unduly onerous, to the reasonableness of the steps specified by the district council (see paragraph 5.11 above).

5.15 The court of summary jurisdiction has the power to be able to quash the notice, make modifications to it, or dismiss the appeal.

Article 12C

5.16 This Article makes it an offence to fail to comply with any requirement imposed by a Litter Clearing Notice, and a person found guilty of this offence may be fined up to level 4 on the standard scale (currently £2,500). A new Article 14A allows district councils to offer payment of a fixed penalty as an alternative to prosecution (please see section 7 of this guidance for more information).

5.17 Under Article 12C a district council, or any person authorised by it, may enter the land and clear it of litter where a Litter Clearing Notice is not complied with. They may require the person on whom the notice was served to pay a reasonable charge in respect of the costs incurred. In determining a 'reasonable' charge, district councils should ensure the costs are no more than is necessary to restore the land to the standard specified in the notice. Such costs may include officer time, use of cleaning equipment (unless of a specialised nature), and administration costs relating to the clearance itself. The legislation does not require a prosecution before the district council enters the land to clear it. Where a prosecution has not been brought it is good practice formally to caution the occupier, or owner, before entering the land.

5.18 See section 10 of this guidance for information regarding entry onto land and exclusive of liability.

6. Dealing with street litter outside premises

General principles

6.1 Articles 13 and 14 of the 1994 Order give district councils the power to tackle street litter generated further to activities on adjacent premises. There is no restriction on the type of litter for which this may be used, but it is intended primarily to help deal with cigarette litter, food and drink packaging and other litter caused by eating 'on the go' as well as litter from cash points and lottery tickets dropped outside shops. The legislation enables

district councils to serve Street Litter Control Notices requiring businesses to clear up the litter and implement measures to prevent the land from becoming defaced again. This system has been simplified through amendments introduced by the 2011 Act and extended so as to allow notices to be used where mobile operations such as burger vans are causing a problem.

6.2 As stressed in the guidance on Litter Clearing Notices, district councils should work in partnership with others to resolve the problem of street litter and seek to remedy it, where possible, through joint working and good management practice.

6.3 It is recognised, however, that partnership working may not always be achievable or effective. In such circumstances, Street Litter Control Notices provide an enforcement mechanism for district councils to place responsibility onto owners and businesses that are contributing to the problem.

6.4 A Street Litter Control Notice is served on the occupier or (if the premises are unoccupied) the owner, so as to place an ongoing obligation on him to comply with the requirement(s) specified for that land. If the occupier or owner changes, a new notice must be issued in order for the requirement(s) to continue.

Detailed guidance

Article 13

6.5 Paragraph (1) provides that a district council may issue a Street Litter Control Notice.

6.6 Paragraph (2) allows a notice to be served on the occupier of certain types of premises fronting a street, or, if the premises are unoccupied, on the owner. Under Article 14(1)(a), the Street Litter Control Notices Order (Northern Ireland) 1995 (1995 No.42), as amended, prescribes the commercial and retail premises in respect of which a notice may be issued. These include:

- Premises used wholly or partly for the sale of food or drink for consumption either off the premises;

- Premises used wholly or partly for the sale of food or drink for consumption on a part of the premises;
- Premises used for wholesale or retail sale of any goods on a part of the premises forming open land adjacent to the street;
- Service stations and other premises on which fuel for motor vehicles is sold to the public;
- Premises used wholly or partly as a cinemas, theatre, concert hall, bingo hall, casino, dance hall, swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, or as an amusement arcade or centre;
- Banks, building society offices, supermarkets, petrol stations and other premises with automated teller machines located on an outside wall of the premises; or
- Bookmakers premises.

6.7 Notices must be issued in relation to the particular premises causing (or likely to cause) a litter problem. The source of the litter may be identified from packaging, labelling or by monitoring at the site. Where several premises are contributing to a litter problem in an area, for example, a row of shops, the occupiers should be encouraged to work together and pool resources to keep the street outside clean and attractive to customers. If notices are required to achieve this, district councils will need to ensure the actions specified for different premises complement each other.

6.8 The Street Litter Control Notices Order (Northern Ireland) 1995 (1995 No.42) also prescribes descriptions of the land and size of area to which the notice may apply. This can be land in the open air which is part of the premises; part of a street, other than the carriageway when it is open to vehicles; relevant land of a district council, or, land under the direct control of any other district council. The land that is specified must be within 100 metres of the premises, except in the case of automated teller machines, in which case it must be within 10 metres.

6.9 Notices can be issued by the district council only if it is satisfied that litter is causing the 'recurrent defacement' of the street or open land adjacent to it or the condition of open land on any part of the premises is of detriment to the amenity of the locality because of litter or the premises is generating quantities of litter that are likely to lead to the defacement of the street or adjacent open land.

6.10 Paragraph (3) sets out details of the required content of notices. Under 3(c) the district council must set out 'reasonable requirements' relating to the clearance of litter, such as the provision of litter bins or clearance at specified times or intervals (see also paragraph 14(4)). It may not, however, require the clearance of litter from a carriageway, except when it is closed to vehicles.

6.11 In order to be 'reasonable' district councils will need to consider the health and safety implications and cost effectiveness of any requirements they are proposing to make, as well as their own role in carrying out street cleansing (see 6.14 below). Regular cleansing may be required to prevent accumulations of litter from occurring, or may be necessary at certain times of the day to clear litter arising from periods of intense activity.

6.12 By virtue of a new paragraph 13(3A), as inserted by section 18 of the 2011 Act, notices can also be served in relation to vehicles, stalls and other moveable structures used for commercial or retail activities on a street.

Article 14

6.13 The 2011 Act has amended Article 14(4)(b) so as to allow district councils to specify standards for the clearance of litter. Guidance on appropriate standards of compliance is contained in the Code of Practice on Litter and Annex A explains how these should be applied in relation to Street Litter Control Notices.

6.14 Paragraph (5) states that the district council must also take into account its own duties under paragraph (7), and those of any other district council, when imposing requirements for any area that is not part of the premises.

6.15 Paragraph (6) sets out the procedure that must be followed by district councils when issuing a Street Litter Control Notice. They must inform the person on whom the notice is to be served and allow him a 21-day period in which to make any representations. These must be taken into account by the council in deciding on the content of the notice and its issue. District councils should proceed with the notice as soon as is practicable once the 21-day period is expired.

6.16 Paragraph (7) allows a person on whom a notice is served to appeal to the court of summary jurisdiction against the notice.

6.17 The 2011 Act has substituted new paragraphs (8) and (9) so as to make it immediately an offence to fail to comply with the requirements specified in a Street Litter Control Notice. A person found guilty of this offence may be given a fine of up to a maximum level 4 (currently £2,500). Fixed penalty notices may be issued as an alternative to prosecution – see section 7 for more details.

6.18 A suggested model form for Street Litter Control Notices is provided at Annex A. District councils may wish to use this as a guide when issuing notices under Article 13.

7. Fixed penalty notices: Litter Clearing Notices and Street Litter Control Notices (Article 14A)

7.1 Article 14A, as inserted by the 2011 Act, enables an authorised officer of a district council to issue a fixed penalty notice where a person has committed an offence under Article 12C(2) or 14(8), that is, failure to comply with the requirements of a Litter Clearing Notice or a Street Litter Control Notice. The fixed penalty should be issued to the person specified in the Litter Clearing Notice or Street Litter Control Notice.

7.2 These fixed penalties operate in a similar way to those under Article 6 for a litter offence, however, there are several differences:

- ‘authorised officer’ in paragraph (7) refers only to an officer of a council who is authorised in writing for the purpose of giving fixed penalty notices under this section. It does not extend to officers outside the employment of the district council.

- if the district council chooses not to set the level of the fixed penalty notice, the standard default amount is £100 under paragraph (4).
- there is no offence of failing to provide a name and address or of giving false details (the officer will already know the name and address from issuing the original Litter Clearing Notice or Street Litter Control Notice).

7.3 Again, more detailed information on this application and use of fixed penalties is provided in the separate guidance available on fixed penalty notices.

8. Controlling the distribution of free literature (Article 14B & Schedule 1A)

8.1 The distribution of free literature can blight public spaces if leaflets and other printed materials are subsequently dropped as litter. Article 14B of, and Schedule 1A to, the 1994 Order, as inserted by section 21 of the 2011 Act, gives district councils powers to control such distributions. The regime allows district councils to designate, by order, areas of their own land or roads, in which the distribution of free literature is permitted only with their consent, and anyone distributing free literature in such an area without consent commits an offence, punishable by a fine of up to level 4 (currently £2,500) on the standard scale or a fixed penalty notice. It is also an offence to commission or pay for the distribution of free printed matter in a designated area without the necessary consent. Land can only be designated if the district council is satisfied that the discarding of free literature is causing its defacement.

8.2 Distributors and organisers who commission them will need to be aware that they may need to obtain consent from more than one district council if the proposed distribution will take place in a number of areas or cut across council boundaries. District councils should make it clear to applicants that they can only give consent for land which they have designated, and should advise applicants to check other council designation orders and seek consent where necessary. It is recommended that any individual guidance prepared by district councils on Schedule 1A explains

this, and includes name and contact details of the relevant departments of neighbouring district councils.

8.3 As with other provisions in the 1994 Order, district councils are encouraged to work with retailers and businesses to minimise the problems associated with the distribution of free literature before imposing restrictions. For example, some advertising companies have codes of conduct to minimise the amount of free literature that is discarded and ends up accumulating as litter in the local environment. District councils may wish to endorse these codes and encourage others to adopt them or establish a voluntary scheme with advertisers before seeking to designate an area. Detailed guidance on the use of the legislation, including the granting of consent and imposition of conditions is given below.

Offence of unauthorised distribution

8.4 Paragraph 1 of Schedule 1A creates the offence of unauthorised distribution of free printed matter.

8.5 Sub-paragraph (1) states that for the offence to be committed:

- The land on which the matter is distributed must be designated under Paragraph 2;
- The person distributing the matter must know that the land is designated.

8.6 To ensure that the second condition is met, district councils will need to ensure that they adequately publicise details of land in their area which has been designated. This should be undertaken by means of on-site signage wherever it is practicable to do so. District councils should also consider publicising by other means, for example, websites, leaflets, local publications and direct contact with businesses and distributors in the area.

8.7 Sub-paragraph (2) states that an offence is committed if someone causes another person to distribute free printed matter in a designated area without consent. The person commissioning the actual distributor therefore also commits an offence. In this case there is no requirement for the person concerned to know that the land is designated; those organising the distribution of free

printed matter are expected to inform themselves of the existence of designated areas. However, under sub-paragraph (3) someone organising such a distribution is not guilty if he can show that he took 'reasonable steps to ensure that the distribution did not occur on any land designated under this Schedule'. To benefit from this defence, an organiser would need to be able to demonstrate that he had taken steps, through, for example, written instructions, to ensure that the distributors of the printed matter were aware of the location of any designated land and that they should not distribute the matter on that land.

8.8 Sub-paragraph (4) creates a specific exemption from the provisions of the Schedule where the distribution is for political, charitable or religious purposes, so as not to inhibit the right to freedom of expression and freedom of thought, conscience and religion enshrined in the European Convention of Human Rights and the Human Rights Act 1998. There is no definition of these terms in the legislation, and interpretation of them is a matter for the courts, and European case law has seen these terms interpreted widely. In all other cases, the legislation allows for justifiable controls. However, the decisions of district councils to designate land and to give or refuse consent must still be compatible with Article 10 of the European Convention of Human Rights.

8.9 Sub-paragraph (6) defines the term 'distribute' as covering the giving out of free printed matter, and offering it or making it available to the public. It therefore catches material that is given out by hand or by means of placing newspapers, leaflets etc. in a stand on designated land. Matter placed on or affixed to vehicles is included within the definition, but the offence does not extend to material put inside a building or letterbox. By virtue of sub-paragraph (7) the provisions do not extend to the distribution of printed matter inside a public service vehicle such as a bus, as defined in the Road Traffic (Northern Ireland) Order 1981. However, the provisions will still apply to material distributed to the public *from* a vehicle on to designated land, whether it is stationary or in motion.

Free newspapers

8.10 Free newspapers are captured by the provisions to the same extent as any other type of free printed matter such as leaflets,

pamphlets and stickers. Whether or not their distribution is exempt under sub-paragraph (4) will depend on their content. Free newspapers posted through letter-boxes, placed inside buildings, or distributed inside a public service vehicle will not fall under the controls in accordance with sub-paragraphs (6) and (7). Promotional supplements and fliers contained within newspapers should not be regarded as 'free' if they are part of a paid-for package.

Designation

8.11 Paragraph 2 authorises a district council to designate an area in which the distribution of free printed matter is to be controlled and sets out the procedures that are to be followed.

8.12 Under sub-paragraph (2) land that is designated must be either relevant land of the district council or all or part of any relevant road for which the district council is responsible, or both. For definitions of 'relevant land' and 'relevant highway' see Article 2 of the 1994 Order (in guidance on Article 7 above). Restrictions cannot therefore be imposed in relation to private land or premises.

8.13 Under sub-paragraph (3) a district council can only designate land if it is satisfied that it is being defaced by the discarding of free printed matter which has been distributed there. As in Article 12(1), whether or not land is 'defaced' is a matter of fact, but the impact of the defacement will depend on a number of factors, such as the condition of the site and impact on the surrounding area. It is therefore unlikely that a designation order for a whole district council or city will be appropriate as designations will relate to a point source or sources from which the materials are being distributed and the area around it that is affected by litter. District councils are advised to gather evidence of defacement, for example, by taking photos or carrying out litter surveys, in support of any proposal to designate.

8.14 Sub-paragraphs (4) to (7) set out the procedures for designation. These are summarised below:

Step 1: Notification of proposal to make an order

8.15 The district council must issue a notice setting out its proposal. This must be: -

- Published in at least one newspaper circulating in the locality; and
- Posted directly on the land.

District councils are also advised to publish the notice on the internet via their individual websites.

8.16 The notice must contain: -

- Details of the land that the district council proposes to designate. It may be useful for the notice to include a map showing the boundary of the area;
- The date that the proposal will come into force. This must be at least 28 days from the date the notice is issued;
- How and for how long objections to the proposal may be made. At least 14 days from the date of the notice must be allowed for objections.

Step 2: Consideration of any objections

8.17 District councils are required to take account of all objections they receive. Proper consideration should be given to each objection, and if it is decided to reject it, the reasons should be recorded; this could be crucial if the decision to go ahead with a proposal and to reject objections to it is challenged legally. It is good practice to write to all objectors whose objections have been rejected explaining the reasons for the district council's decision.

Step 3: Notification of an order

8.18 If a district council decides to go ahead with an order, it must issue a notice announcing its decision. This must be: -

- Published in at least one newspaper circulating in the locality; and

- Posted directly on the land.

District councils are also advised to publish the notice on the internet via their individual websites.

8.19 The notice must give the date that the order will come into force. This must be at least 14 days from the date the notice is issued.

8.20 Sub-paragraph (8) allows a district council to revoke an order at any time. By virtue of sub-paragraph (9), notice of the revocation must be: -

- Published in at least one newspaper circulating in the locality; and
- Posted directly on the land.

District councils are also advised to publish the notice on the internet via their individual websites.

Consent and conditions

8.21 Paragraph 3 sets out the rules for issuing consents to distribute free printed matter in an area subject to a designation order.

8.22 Under sub-paragraph (1) anyone wishing to distribute free literature in a designated area must apply to the district council for consent to do so. Consent may be given by the council to the person applying or to any other person. The consent may be for named individuals or by description. An example of the latter would be to all the employees of a particular company. The applicant wishes to use a variety of distributors, such as independent contractors, self-employed distributors and their agents or employees, the district council should ensure the applicant is aware of their responsibilities for ensuring the consent is complied with, in granting authorisation. Councils should agree a reasonable timescale for responding to applications, and applicants should be advised of this.

8.23 Sub-paragraph (2) allows the district council to place limitations on the consent: -

- By reference to the material that may be distributed;
- By reference to a particular period, or particular times or dates;
- By reference to any part of the designated land;
- To a particular distribution.

Alternatively, a blanket consent may be given to the persons specified, allowing the distribution of any material in any part of the area at any time.

8.24 Sub-paragraph (3) states that the district council ‘need not’ give consent to the applicant if it considers that the proposed distribution would likely lead to defacement of the designated land. There is no requirement for the district council to grant consent to an applicant, but at the same time the district council must be able to justify its refusal based on the likelihood of the distribution causing defacement of the local environment. Under sub-paragraph (4) the district council may also refuse consent if the applicant has been convicted of an offence, or, has paid a fixed penalty notice for the distribution of free literature without consent in a designated area, within the five years preceding the date of the application.

8.25 Sub-paragraph (5) enables the district council to place conditions on the consent if it considers that these are necessary or desirable for protecting the designated land from defacement or for the effective operation and enforcement of the Schedule. The ability to impose conditions on the consent may be a mitigating factor where the district council would otherwise refuse to grant consent. For example, if the council is concerned that a particular distribution is likely to cause defacement of the designated area it may place a requirement on the distributor to clear up any such material which is discarded there.

8.26 Sub-paragraph (6) enables a district council to require a person distributing printed matter in a designated area to provide written evidence of the consent, on demand, to an authorised officer. It is therefore implicit in the legislation that any consent granted under the Schedule should be given in writing.

8.27 Under sub-paragraph (7), consent may be revoked entirely, or in part, at any time, if the person to whom the consent was granted fails to comply with the conditions imposed on him or is convicted of an offence under paragraph 1 or pays a fixed penalty under paragraph 7. Similarly, under sub-paragraph (8) any condition imposed in relation to the consent may be varied or revoked at any time by notice to that person.

8.28 As sub-paragraph (7) only refers to the person to whom the consent was given, if district councils are granting authorisation to others under the consent the conduct of those persons may be dealt with as a condition. The person receiving the consent would then be subject to this, any breach of which would render the consent revocable.

Fees

8.29 Paragraph 4 authorises district councils to charge a fee for issuing consent. The amount of this fee is for the district council to determine but it must not be more than is reasonable to cover the costs of operating and enforcing the Schedule 1A provisions in a designated area. For example, this may include: the initial survey of the area, administration of consents, notification procedures, and the monitoring and enforcement of restrictions. They may not include potential clean-up costs.

Appeals

8.30 Paragraph 5 outlines the process for appeals by any person aggrieved by decisions in relation to a consent. Appeals may be made to the court of summary jurisdiction against a decision to refuse a consent, impose any limitation or condition on a consent, or to revoke a consent.

Seizure of material

8.31 Paragraph 6 deals with the seizure of printed matter being distributed in a designated area. If a person is found to be distributing free literature in a designated area without consent, an authorised officer of the district council may seize all or any of the material. This may be reclaimed by the person purporting to be its owner on application to the court of summary jurisdiction. The

court must order the return of the printed matter to the owner if it is not required for legal proceedings brought by the district council under this Schedule. If the material is not reclaimed, and the council does not know the name and address of the person from whom it was received, it may be disposed of or destroyed at the conclusion of proceedings for an offence; at the end of the time period in which proceedings may be brought; or, on discontinuation of any proceedings that have been initiated. In all other cases, the material must be returned.

Fixed penalty notices

8.32 Fixed penalty notices may be issued as an alternative to prosecution for the offence of distributing free literature without consent under Paragraph 7. District councils may set the level of the fixed penalty, or, if they choose not to do so, a standard default amount of £75 applies. Paragraph 8 applies the wider definition of 'authorised officer' to the Schedule, so that District councils may make arrangements with other persons to issue fixed penalties in addition to their own employees.

8.33 More detailed information on the application and use of fixed penalties is provided in the separate guidance available on fixed penalty notices.

9. Public registers (Article 15)

9.1 Article 15 places a duty on each district council to maintain a register containing copies of all Street Litter Control Notices and all designation orders made in relation to controls on the distribution of free literature under paragraph 2(1) of Schedule 1A to the 1994 Order.

9.2 Notices and orders must be kept in the register for so long as they are in force.

9.3 The district council is required to make the register available for public inspection, at all reasonable times, free of charge. It must also provide facilities to allow copies of the documents to be taken on payment of a reasonable charge.

9.4 The register does not need to be kept in documentary form and so may be held electronically.

10. Access to property: health, safety and liability issues

10.1 District councils have the power to enter land to clear it of litter under: -

(i) Article 12(10) – failure of a duty body to comply with a Litter Abatement Notice.

(ii) Article 12C(3) – failure of a person on whom a Litter Clearing Notice has been served to comply with its requirements.

10.2 The safety of staff undertaking such litter clearance and of the general public is paramount. District councils should work with partners to ensure their health and safety obligations are met.

Land belonging to statutory undertakers

10.3 The clearance of litter from land belonging to statutory undertakers may require the carrying out of special safety procedures and the use of specialised equipment. Any work should therefore be co-ordinated with other activities in order to avoid excessive costs. Accordingly, district councils must consult with statutory undertakers as to what would be a reasonable period of time for compliance when serving the initial notice.

Access to railway land

10.4 In the case of railway land district councils must not under any circumstances enter nor purport to authorise entry by any person. Only the railway undertaker concerned is in a position to authorise entry by persons in possession of appropriate railway safety certification. A failure to comply with this instruction is likely to place the district council concerned in breach of its own duties under Health and Safety at Work. The officer(s) of the district council authorising entry may in such circumstances also render themselves liable to prosecution in their personal capacity.

Access to ports and airports

10.5 Access to ports and airports is strictly controlled because of the risks to safety and security; in particular, access to the airside at commercial airports and access into Restricted Areas of ports is subject to stringent security checks.

10.6 All UK port facilities handling international traffic are now subject to the international Ship and Port Facility Security Code as enforced by The Ship and Port facility (Security) Regulations 2004 (S.I. 2004/1495). This international security framework implemented on 1 July 2004, requires port facilities to control access into any areas that have been designated as Restricted Areas by the Department for Transport. Access control may include, but is not limited to, staff and visitor pass systems and a documentation, person, baggage and vehicle search regime.

10.7 Additionally, ports and airports generally cover an extensive area and may have complex and heavily used traffic routes. In order to ensure that they do not stray into areas where they are endangered by heavy plant, contractors **MUST** be escorted to the place where they work. Contractors carrying out work at ports and airports should therefore contact the port authority or airport authority responsible for the site to arrange access before carrying out any work.

Exclusion of liability (Article 18B)

10.8 Article 18B of the 1994 Order provides exclusion of liability (damages or otherwise) for persons entering land in connection with Articles 12(10), 12A(9) and 12C(3) and also (serving a Litter Clearing Notice by posting it on the land), namely: -

- The district council and any employee of the council, and
- In relation to section 12C(3), any person authorised by the council under that provision and any employer or any employee of that person.

10.9 Paragraph (3) sets out exemptions to this exclusion, covering anything done or omitted to be done in bad faith, failure to exercise due care and attention and acts or omissions for which proceedings are brought under section 6(1) of the Human Rights Act 1998.

11. Abandoned Shopping and Luggage Trolleys (Article 19 and Schedule 1)

11.0 Schedule 1 of the 1994 Order allows a district council to seize store and dispose of abandoned shopping and luggage trolleys found in its area. This is an adoptive Schedule under Article 19. The provisions allow for costs to be recovered from the owners of the trolleys, and amendments made by the 2011 Act have improved the ability for district councils to reclaim these charges.

Article 19

11.1 This Article sets out the procedure whereby a district council may resolve that Schedule 1 will apply in its area.

11.2 In summary the district council must: -

- Consult with ‘the persons or representatives of persons who appear to the district council to be persons who will be affected by the application of Schedule 1’.

This should include: -

(i) retailers known to be providing a trolley service in that area and/or representative bodies such as the British Retail Consortium, the Association of Town Centre Management (NI) and the Northern Ireland Independent Retail Association.

(ii) rail, road transport or airport operators known to be providing a trolley service in that area.

It may also wish to seek the views of the following: -

(iii) other businesses and landowners that may be affected by trolley abandonment, local residents and community groups (this may be done by providing details of the proposal in local newspapers, district council newsletters, etc. and inviting comments).

(iv) the Northern Ireland Chamber of Commerce.

(v) the Northern Ireland Environment Agency.

(vi) the Police Service of Northern Ireland.

- Make the resolution. This needs to state the date on which it will come into force, being not less than three months from the date on which the resolution is passed.
- Publish notice of the resolution in at least one newspaper, indicating the general effect of the adoption of the Schedule.

From time to time consult on the operation of Schedule 1 in its area with those who are affected by it. District councils are advised to review the operation of the Schedule at least every five years, and monitor the number of trolleys recovered under the Schedule. As part of the review they should consider whether adequate steps are being taken to reduce the number of abandoned trolleys. Earlier review may be necessary if there is a significant change in circumstances.

Schedule 1

Paragraph 1 - Application

11.3 Sub-paragraph (1) provides that the Schedule applies to any shopping or luggage trolley that is found by an authorised officer on 'any land in the open air', and that appears to him to be abandoned. Definitions of 'shopping' and 'luggage' trolley are given in paragraph 5:

11.4 A 'luggage trolley' is a trolley provided by a person carrying out a railway, light railway, tramway or road transport undertaking, or an airport operation, to travellers for carrying their luggage to, from or within the premises for the purposes of that undertaking.

11.5 A 'shopping trolley' is a trolley provided by the owner of a shop to customers to enable them to carry goods purchased at the shop.

11.6 Both definitions exclude power-assisted trolleys. The powers apply to trolleys in any condition, and may therefore be used in relation to broken, unserviceable trolleys, and trolley parts.

11.7 The term 'any land in the open air' may be deemed to apply to land covered by water, allowing the powers in the Schedule to be exercised by a district council in relation to watercourses. However, the safe removal of trolleys from watercourses may require specialist techniques and an understanding of river conditions. In such cases, district councils are advised to draw on the expertise of specialist contractors and to seek advice, if required, from the Northern Ireland Environment Agency, which may also be able to take action.

11.8 Sub-paragraph (2) excludes certain types of land from the provisions, namely: -

- land in which the owner of the trolley has a legal estate;
- land used for off-street parking and where facilities are provided for leaving shopping trolleys that have been used by customers;
- any other land which has been designated by the district council for the purposes of providing trolley parking facilities; and
- land used for the transport under-takings for which luggage trolleys may be provided.

Paragraph 2 - Power to seize and remove trolleys

11.9 Sub-paragraph (1) sets out the power enabling a district council to seize and remove an abandoned trolley.

11.10 Sub-paragraph (2) provides that where the land appears to be occupied, the consent of the occupier must be obtained before the trolley can be removed. Alternatively, the district council may serve a notice on the occupier stating that it intends to remove the trolley. If no notice of objection is received in response, district council may remove the trolley after 14 days.

Paragraph 3 - Retention, return and disposal of trolleys

11.12 Under sub-paragraph (1), the district council is required to keep the trolley for a period of six weeks after seizing and removing it. At the end of that period it may sell or otherwise dispose of the trolley.

11.13 A notice must be served on anyone who appears to be the owner of the trolley under sub-paragraph (2), as soon as reasonably practicable, and at least within 14 days. The notice must state that the district council has removed the trolley, give details of where it is being kept, and that the council may dispose of the trolley if it is not claimed.

11.14 Sub-paragraph (3) requires the district council to deliver the trolley to the owner if it is claimed within the six-week period. However, sub-paragraph (4) removes the owner's entitlement to the trolley if he does not pay such charges as the district council may require.

11.15 By sub-paragraph (5), if the trolley is not claimed, the district council is not permitted to dispose of it unless 'reasonable enquiries' have been made to ascertain who owns it.

Paragraph 3A - Retention, return and disposal of trolleys

11.16 Paragraph 3A was inserted by the 2011 Act so as to improve the procedure for cost recovery. It applies where the six-week period has expired, the trolley has not been claimed (or has been claimed but the demanded charges not paid), and the council is entitled to sell or dispose of it (sub-paragraph (1)).

In such cases the district council may charge a person who appears to it to be the owner, an amount to cover the removal, storage and disposal of the trolley (sub-paragraph (2)).

11.17 Sub-paragraph (3) provides that this is payable on demand, and sub-paragraph (4) that it may be recovered as a debt by the council if it is not paid.

11.18 Sub-paragraph (5) provides a defence against the recovery of the debt, if the person can prove that he was not the owner of the trolley at the time it was removed.

Paragraph 4 - Charges

11.19 This paragraph relates to the fixing of charges for dealing with abandoned trolleys. It provides that the district council may set charges that are sufficient to cover the cost of removing, storing and disposing of shopping or luggage trolleys under the Schedule.

11.20 District councils should set a standard charge within the terms of the legislation, based on the average cost of dealing with abandoned shopping and luggage trolleys in its area. In doing so district councils will be able to obtain charges that are as close as possible to the actual costs incurred. These charges may include:

- administrative costs, such as those arising from the notification requirements in paragraphs 2,3 and 3A above;
- staff time;
- collection and delivery;
- physical storage space.

11.21 These costs must be regularly reviewed, and should be included in the consultation exercise on the operation of the Schedule required by Article 19 of the 1994 Order. District councils should directly notify those persons who are likely to be affected and should also ensure that adequate local publicity is given to the level of the charges.

11.22 Sub-paragraph (2) provides that a district council may agree a trolley collection scheme with persons who own shopping or luggage trolleys in its area, and where such an agreement is made the district council may not charge costs under the Schedule for any trolleys within the scheme that are recovered by it.

Annex A

Model forms for litter notices

1. Litter Abatement Notice

THE LITTER (NORTHERN IRELAND) ORDER 1994 ARTICLE 12(1)

The(*name of district council issuing notice*), being satisfied as respects the relevant land described in paragraph 2

- i. that it is defaced by litter, or
- ii. that its defacement by litter is likely to recur.

(delete i. or ii. If applicable), hereby serves the following Notice:

1. This Notice is served on the following appropriate authority/designated statutory undertaker/governing body of a designated educational institution (delete as appropriate), as the responsible body having a duty under Article 7(1) of the Litter (Northern Ireland) Order 1994 to keep its relevant land, so far as is practicable, clear of litter:

Name of responsible body:

.....

Address:

.....

and,

- i. Requires that the litter is cleared within(*specify time period for compliance*), e.g. *seven days*) from the date on which this notice is served.

and/or,

ii. Prohibits the responsible body from permitting that land to become defaced by litter again.

(if appropriate, delete whichever of i. or ii. is not to apply)

2. The relevant land to which this notice applies is the land which:-

i. is delineated and shown *(describe colouring or other method used to identify the land on the map)* on the map forming part of this Notice, and

ii. is briefly described in the Schedule to this Notice.

3. An appeal against this notice may be made to the court of summary jurisdiction within 21 days from the date on which it is served. The court must allow the appeal if you can prove that the duty under Article 7(1) has been complied with; the Code of Practice on Litter (issued pursuant to Article 9(1)) is admissible as evidence in respect of compliance with that duty.

4. If you fail without reasonable excuse to comply with the requirement and/or prohibition (delete as appropriate) in paragraph 1:

- you may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500), plus further fines of one-twentieth of that sum (currently £125) a day for each day that the offence continues after conviction.

- the district council is entitled, in respect of land other than relevant Crown land or certain relevant land of designated statutory undertakers, to enter your land, clear the litter, and charge you for the costs incurred.

SCHEDULE

(description of relevant land)

Date

2. Litter Clearing Notice

LITTER (NORTHERN IRELAND) ORDER 1994 ARTICLE 12A(1)

The (*name of district council issuing notice*), being satisfied that the land described in paragraph 2 of this Notice is defaced by litter so as to be detrimental to the amenity of the locality, hereby requires by way of this Notice that:

1.

Name of occupier or owner:

.....
...

Address:

.....
...

i. Clears the land of litter so as to restore it to

.....
...

(*standard for clearance, e.g. a grade B in accordance with the Code of Practice on Litter*) within
(*time period for compliance, e.g. 28 days*) from the date on which this notice is served.

ii. And in addition, (the (*name of district council*) being satisfied that the land is likely to become defaced by litter again), takes the following steps to prevent the land from becoming so defaced:

(*specify steps, e.g. Carry out a fortnightly inspection of the site, and remove any litter.*)

(*Delete ii above if not applicable.*)

2. The land in relation to which this Notice applies is that land in the area of (*name of district council*) which –

i. is delineated and shown (*describe colouring or other method used to identify the land on the map*) on the map forming part of this Notice, and

ii. is briefly described in the Schedule to this Notice.

3. An appeal against this notice may be made to a court of summary jurisdiction within 21 days from the date on which it is served, on the grounds that:

- there is a material defect or error in, or in connection with, this notice;

- this notice should have been served on another person;

- the land is not defaced by litter so as to be detrimental to the amenity of the locality; or

- the action required is unfair or unduly onerous.

4. If you fail without reasonable excuse to comply with the requirement(s) in paragraph 1:

- you may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500);

- you may, in the alternative, be given the opportunity of accepting in lieu of prosecution a fixed penalty, in the amount of either £100 or at a level set by the district council within a range of £75 to £110. (delete if not applicable)

In addition to the above:

- the district council may enter your land, clear the litter, and charge you for the costs incurred.

SCHEDULE

(Description of land)

DATE

3. Street Litter Control Notice

LITTER (NORTHERN IRELAND) ORDER 1994 ARTICLE 13

The (*name of the district council issuing notice*) being satisfied that in respect of the premises named in paragraph 1 below:

(delete (a), (b), (c) below as appropriate)

(a) there is recurrent defacement by litter of the land described in paragraph 2, being part of the street or open land adjacent to the street which is in the vicinity of the premises, or

(b) the condition of any part of the premises described in paragraph 2 which is open land in the vicinity of the frontage is, and were this Notice not served is likely to continue to be, detrimental to the amenities of the locality by reason of the presence of litter, or

(c) there is produced, as a result of the activities carried out on the premises, quantities of litter of such nature and in such amounts as are likely to cause the defacement of any part of the street, or of open land adjacent to the street described in paragraph 2, which is in the vicinity of the premises,

hereby serves the following Notice:

1. This notice is served on (*name of occupier or owner*) in respect of the following premises:

Name of Premises:

.....

Address:

.....

And requires you to:

(specify appropriate requirements, e.g.

i. Install a litter bin outside the premises and empty it regularly so as to ensure that the bin and its contents do not become a nuisance or give a reasonable ground for complaint.

ii. Clear the land of litter so as to restore it to (standard for clearance, e.g. a grade B in accordance with the Code of Practice on Litter) within (time period for compliance e.g. 7 days) from the date on which the notice is served.

iii. Clear all litter daily from the shop frontage to the edge of the pavement).

2. The open land to which this Notice applies is the land which:-

i. is delineated and shown (describe colouring or other method used to identify the land on the map) on the map forming part of this Notice, and

ii. is briefly described in the Schedule to this Notice.

3. An appeal against this notice may be made to a court of summary jurisdiction within 21 days from the date on which it is served. The court must allow the appeal if you can prove that you have complied with the duty imposed upon you under Article 7(1) the Litter (Northern Ireland) Order 1994 in respect of the land; the Code of Practice on Litter issued pursuant to Article 9(1) is admissible as evidence in respect of compliance with that duty.

4. If you fail without reasonable excuse to comply with the requirement(s) in paragraph 1:

- you may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500);

- you may in the alternative, be offered the opportunity of accepting a fixed penalty notice in lieu of prosecution, in the amount of either £100 or at a level set by the district council within a range of £75 to £110. (delete if not applicable)

SCHEDULE

(Description of land)

To note: Street Litter Control Notices may only be issued in relation to land and premises prescribed under (currently) Regulations made by the Department.

DATE

Preventing Cigarette Litter

Guidelines for District Councils

Department of the Environment

Preventing Cigarette Litter

Introduction

1. Cigarette litter is Northern Ireland's most common type of litter, being present on 80% of its streets. Littered cigarette butts are harmful to the environment, they are time consuming and costly to clean-up and they do not look good. Whilst efforts are being made to reduce the problem, for example, by advertisements in the local press, following the introduction of the smoke-free legislation in Northern Ireland in April 2007, smoking-related litter has risen in many places, as smokers are now required to move outside their workplace/places of entertainment to smoke.
2. These guidelines have been developed by the Department of the Environment to provide guidance and information about cigarette litter prevention. They are aimed at district councils to help them contain and reduce cigarette litter on their land and provide guidance on forming partnerships with businesses and retailers in their area. It also encompasses education, enforcement and cleansing.
3. The guidelines below provide advice about how to reduce and prevent cigarette litter, based on international and local experience. They are: -
 - Ashtrays – choose the right ashtray to suit your context and needs;
 - Signage – provide clear, consistent anti-littering signage;
 - Cleansing – clean up littered cigarette ends;
 - Partnerships – work with local organisations;
 - Leadership – walk the talk and be a leader in your community;
 - Educate – change the cigarette littering behaviour of smokers; and

- Enforcement – use the legislation and powers available where appropriate.

Ashtrays – Choose the right ashtray

4. Ashtrays are an integral part of a sustainable solution to reducing cigarette litter. Ultimately, if all smokers used an ashtray then there would not be a cigarette litter problem. However, smokers will often cite a lack of ashtrays as a reason for littering cigarette ends.
5. Littering hotspots can be identified through analysis of local datasets, such as those completed by Tidy Northern Ireland, and will help inform decisions on the placement and frequency of bins. It is advisable to review the current number and placement of bins in your area to ensure that there is adequate provision in areas of high footfall, particularly outside pubs, clubs and offices. Research suggests that people will not walk more than 12 metres to dispose of their cigarette litter. This may be worth considering when installing new ashtrays.
6. Research carried out has also shown that smokers are very fearful of setting general litter bins alight and prefer a dedicated cigarette bin to dispose of their cigarette ends. Their preference is for a dedicated cigarette bin that is:
 - Large enough to hold a high volume of cigarette ends;
 - Easy to clean and use, with large holes to insert the cigarette end; and
 - Clear signage that indicates it is for cigarette ends.
7. While it would be impossible to place ashtrays everywhere, you can help maximise the use of new (and old) ashtrays by choosing the right type of ashtray to suit your context. The placement, design and visibility of your ashtray can all influence whether it is used or not.

Placement

8. There are a number of common cigarette litter hotspots where an ashtray could be installed. However, as there are so many types of ashtrays (wall mounted, post mounted, litter bin mounted, free standing, windproof, vehicle ashtrays and portable ashtrays) it can sometimes be difficult to choose the most suitable one for the needs of the area.
9. Here are some suggestions for choosing the right type of ashtray in common litter hotspots: -

Transition points (e.g. transport interchanges, office/warehouse entrances and pub/hotel entrances) – Wall mounted ashtrays are useful at transition points such as the entrance to buildings and dedicated smoking areas. Consider the height of your installation if ashtrays are wall or post mounted. Portable freestanding ashtrays are a good choice for some buildings/designated smoking areas where a permanent ashtray cannot be installed (sometimes this is the case if a building is listed under planning legislation – see paragraphs 17 and 18 below for more information). Free standing ashtrays that are low to the ground (such as buckets) are not ideal, as many smokers will attempt and fail to throw their cigarette litter in the receptacle, meaning that a greater proportion ends up being littered around the base of the ashtray.

Pedestrian areas (e.g. open-air shopping malls) – Post mounted ashtrays are useful in areas of high footfall, such as open-air pedestrian shopping malls. Adding an ashtray or a stub plate to a public place litter bin can be useful because they are already identified by the community as disposal areas for other types of litter, though do consider the research that shows smokers prefer dedicated bins. However, try to ensure that the ashtray/stub plate is highly recognisable so that the ashtray is not filled with other types of litter. Also, a recognisable stub plate with a large surface area will dissuade smokers from stubbing out (and therefore staining) the casing of the litter bin.

Designated smoking areas – Ashtrays that hold a high volume of cigarette litter are most useful in these areas. Free-standing ashtrays tend to hold a high volume and so may be a good choice in this context. Some smoking shelters come with a wall mounted ashtray included in the structure.

On-the-Go – Portable ashtrays are small enough to be carried around in the pocket or bag of a smoker. They are designed to be used ‘on-the-go’, which is especially useful when a public ashtray is not available or convenient to the smoker.

Events – You may wish to provide designated smoking areas at outdoor events. If so, a high volume, highly visible ashtray is a good option. For example, a ‘Butt Zone’ has been used successfully at an outdoor festival in Australia. Because it was signposted above head height, smokers were able to identify its location from anywhere in the venue. Portable or ‘personal’ ashtrays are also useful at outdoor events which require a high volume, temporary solution to cigarette litter.

Outdoor eating areas – Windproof ashtrays are small ‘table ashtrays’ designed to be used outdoors. They have a windproof cover to ensure that cigarette ends, and ash, remain within the ashtray. They are particularly useful for pubs with outdoor areas. (Some consideration may need to be given to attaching the ashtrays to tables to prevent them from being stolen).

Vehicles – Vehicle ashtrays are portable, cup shaped ashtrays that can be stored in the cup holder of a vehicle and removed to be emptied in a litter bin. Obviously, the safety of driving is very important so the hole at the top of the ashtray should be large and ideally, it should be able to be covered up so ash doesn’t fly back into the smokers face when driving. Some smokers empty the contents of these ashtrays from their vehicles when stationary so you may wish to

consider the inclusion of emptying instructions on the side of the ashtray.

Design

10. When choosing an ashtray, it is important to consider its design. The design of an ashtray can influence its ease of use and therefore how much it is used by smokers.
11. Design includes the look and functionality of the ashtray. You may wish to consider the aesthetics of the existing street furniture with which you will want it to harmonise. Many ashtray manufacturers are able to provide casings in a range of colours, which may help it to blend in with the surroundings and other types of street furniture. It is also worth noting, however, that smokers will still need to easily identify an ashtray from a distance, considering that they require an immediate disposal solution for a burning cigarette end. You should, therefore, try to strike a balance between harmonising with the existing street furniture and making the ashtray stand out. This could be achieved by placing a cigarette litter symbol on the front of the ashtray (see paragraphs 19 and 20).
12. Ashtrays obviously need to be heat resistant. Most outdoor ashtrays will have a metal inner and some have a plastic outer. Heat resistant materials are melamine (a thermosetting polymer which is very resistant to heat), mild steel, stainless steel or anodised aluminium. Polyethelyene has good heat resistance but will burn if set on fire. While there are some grades of polyethelyene that are flame retardant, they are not particularly weather resistant. Some ashtrays also have design features that aim to dampen the development of fire caused by smouldering cigarette ends by limiting oxygen.
13. Consider whether the ashtrays need to be weather proof. The performance of many plastics can deteriorate when left in sunlight, causing colour fading or brittleness. You may wish to check the impact performance, UV stability and colour-fastness of the ashtrays before purchasing. Stainless steel is very weather proof, and comes in a variety of grades. Grade 304 is a general grade that can show signs of staining

and marking when cigarettes are stubbed out on it. Grade 316 is preferable as it has better weather and staining resistance. Also consider whether the ashtray has a 'hood' to ensure that it does not become filled with water during rain (a small amount of water obviously is little to be concerned about).

14. Many permanent ashtrays have vandal proof measures to ensure that they are not stolen, vandalised or damaged by vagrants seeking partially used cigarette ends. These measures include a range of locks and wall attachments. Also, consider the volume of cigarette ends that your ashtray will need to hold in between emptying. Most manufacturers can provide the volume of the ashtray.
15. You may need to consider street clutter. If this is a problem for your locality, then the addition of dedicated ashtrays may not be suitable. Stub plates or ashtrays attached to existing litter bins are one solution (see previous commentary for tips to remember when installing stub plates). Another solution is the distribution of personal ashtrays.

Maintenance

16. Ensure that ashtrays are emptied by your existing cleaning contractor. Also ensure that the outside of the ashtray is kept clean. Request that your maintenance contractor (or street team) report it if the ashtray or its component parts are damaged or vandalised, as ashtrays that appear dirty or damaged are a deterrent to their use.

Planning permission

17. Under current planning legislation any external alteration to a listed building requires a listed building consent from the Department of the Environment. The Department's Northern Ireland Environment Agency produces a list of such buildings. The placement of a wall mounted bin or receptacle on the side of such a building would be considered an alteration in this context. It is a criminal offence to make any such alteration without listed building consent. Application forms for obtaining consent are available from the Department's Planning Service, on

request. The application process requires documentation of ownership and detailed plans of any proposed alterations to be submitted with the application form. The Planning Service will consider the amenity value of any alteration but would be unlikely to grant it if, in its opinion, the alteration would affect the character of the building.

18. Depending on locality and circumstances this application procedure can be protracted and prove a burden on staff time and resources. It would therefore be advisable to consider the benefits of portable free standing bins or receptacles in areas where such consent would be required, as in many cases these can provide an adequate disposal solution.

Signage – Provide clear, consistent signage

19. Clearly label public place ashtrays with consistent signage so that smokers (and non-smokers) can easily identify that a receptacle is designed solely for cigarette ends. This will help to reduce litter and cross-contamination (which can lead to fires).
20. The smoke-free legislation requires clear signage to indicate where buildings and enclosed public places are smoke-free. Keep this in mind when placing signs: -
 - Some ashtrays are labelled with non-smoking signage. This is not no-littering signage! It causes confusion and does not clearly communicate appropriate disposal to the smoker.
 - Consistency with signage, symbols and even the type of ashtray you install is important, as it creates clear guidance for smokers wherever they are, ultimately resulting in cleaner streets.

Cleansing

21. Cigarette litter is time consuming to clean up because it is small and tends to get trapped in cracks and grates on the ground. While this is further incentive to prevent cigarette litter in the first place, cleaning up cigarette litter still needs to

take place. Keeping litter hotspots clean, especially around ashtrays and signage, leads to less littering and more binning.

Partnerships

22. Partnerships can help to amplify the effect of your campaign and any subsequent work you undertake to improve local environmental quality. Local businesses, volunteer groups and community groups can provide local knowledge to enhance your promotions.
23. You may wish to consider creating a partnership with the following organisations: -
 - Local businesses in the target area;
 - Local Chambers of Commerce;
 - Town Centre Managers; and
 - Universities or colleges.

Engaging local businesses

24. Local businesses have an important role to play in cigarette litter prevention, by providing ashtrays and cleaning up cigarette litter. However, some local businesses often have to work hard to stay afloat, and it may make it difficult to engage them in this process. By focussing on 'what's in it for them' and by providing accurate, consistent information and resources, local businesses can be engaged as part of the solution to cigarette litter.
25. Here are some ideas about how to support and engage local businesses:
 - Local businesses need to know about their responsibilities under local law – provide this information in local newspapers, local trade journals or through your local Chamber of Commerce. You may also wish to write a letter to local businesses about the issue.

- Encourage local businesses to purchase and maintain ashtrays for installation on their premises – this is especially important for businesses that provide outdoor areas for patrons (such as cafes, bars and pubs). They may require windproof ashtrays for outdoor tables, or pole/wall mounted ashtrays near the entrance to their premises.
 - Provide other incentives to local businesses to maintain their image – e.g. giveaway free dustpan and brooms or portable ashtrays.
 - Provide free promotional resources to local businesses – e.g. table talkers, posters and/or branded coasters.
26. Cigarette litter is classified as street cleansing residues, and is not classified as hazardous or toxic waste. Cigarette litter can therefore be disposed of among other types of rubbish.

Be a leader

27. Set a good example and provide smokers in your own organisation with ashtrays and awareness about cigarette littering.
28. In order to do this, you could run an internal education campaign, as described below. In fact, if you have never run a community wide education campaign before, then you could use the staff education campaign as a ‘trial run’, enabling you to iron out any potential problems before the campaign is implemented on a wider scale.

Educate – Change littering behaviour

29. Education campaigns highlight the problem of cigarette litter and call upon individuals to take action to change it.
30. In order for sustained and improved environmental change, the education campaigns should include the tools to change (e.g. ashtrays), awareness about why the change is needed (e.g. impact of littered cigarette ends) and a call to action

(e.g. No Butts, Stub It, Bin It). Sometimes the threat of enforcement is the only way that people will change their littering behaviour, so this should be used where appropriate.

31. The following steps provide a framework by which to conduct a cigarette littering campaign: -

Plan

32. You should start to plan your cigarette littering campaign several months in advance. While the promotional aspects of the campaign will be limited to a short timeframe, you will need time to prepare promotional items, advertising, galvanise support from partners and promote your message well in advance of the campaign actually beginning.
33. Create a list of aims and make sure they are measurable and specific, for example: installation of five ashtrays in litter hotspots; reduce cigarette litter by 20%; talk to 100 smokers about cigarette litter solutions.
34. Choose the dates of your campaign. The campaign should be conducted over a short timeframe – perhaps one or two weeks. Of course, you should notify your colleagues of your campaign dates as soon as possible.

Target areas

35. Identify the litter hotspots that your campaign will be targeting (e.g. outside office entrances in one street). Ensure that the size of the area is manageable with regard to the resources available to you. Transition points tend to attract more cigarette litter as smokers need to dispose of cigarettes before entering certain areas.
36. Common cigarette litter hotspots are: -
 - Pubs/hotels;
 - Office/warehouse entrances; and
 - Transport interchanges.

37. You can identify litter hotspots through the results of your environmental quality surveying. You may also wish to discuss litter hotspots with street cleansing staff and local businesses.

Determine educative techniques

38. A range of techniques have been proved to be successful to reduce cigarette litter, as described below. You may wish to use a range of these techniques, depending on the resources available to you and the needs of your campaign.

Print advertising (e.g. billboards, A4 posters): Print advertising is useful because it enables you to promote your message to a wide audience. Clearly, the more locations you can utilise the better for your campaign. Depending on your budget, you may wish to consider advertising space such as billboards, on telephone boxes, at bus or train stops, in train stations or within buses. Repetition of the campaign message will help to change behaviour in the long-term. Identify advertising space that is available in your target areas and aim to book as much of this space as possible. Consider the use of 'unusual' advertising space which may specifically catch the attention of smokers (e.g. advertising on the footpath or 'media steps', split advertising up the steps at train stations). Posters can also be provided to local businesses for display in their windows. Some manufacturers of ashtrays provide advertising space on the front of their ashtrays, while others provide artwork for advertising.

Face to face techniques: This can be a powerful way to reach your target audience. It involves a team of trained educators who are dressed in matching campaign t-shirts that promote the campaign message. They approach smokers in target areas in a positive way, to tell them about reducing cigarette litter and ask them not to litter their cigarette ends. The education team could also distribute personal ashtrays and reward smokers (with promotional resources described in this section) for observed appropriate disposal behaviour. The target audience is more likely to

remember the message if they are given a positive verbal message by individuals in a recognised team with credibility. The team would need to be trained so they are well prepared for the campaign of action.

If you do undertake face to face education, ensure that you approach only smokers who are obviously of the legal age (18 years old). Promotional resources should only be targeted at adults and education campaigns for cigarette related litter should never target children.

Sanctions and rewards: Sanctions are most commonly littering fines, or the threat of fines, which act as a disincentive to littering. Rewarding positive behaviour with small tokens of recognition helps to reinforce this behaviour. Rewards could include pocket ashtrays or key rings.

Develop partnerships

39. Partnerships with businesses, volunteer groups and community groups can act as multipliers to spread your anti-littering message further. See paragraphs 22 to 25 for more information about engaging local partners for inclusion in your campaign.

Install ashtrays

40. Install ashtrays in litter hotspots or improve the design or placement of existing ashtrays. See paragraphs 4 - 16 above to help you to choose the right ashtray for the area.

Pre-campaign monitoring

41. You will need to monitor the success of the campaign by using the cigarette butt count methodology to measure the change in butt litter on the ground. The first stage of monitoring should occur before the campaign begins. You will then compare these results with a second round of monitoring after the campaign. This methodology is further described in the Appendix.

Gather promotional items

42. Promotional items promote the campaign message. They act as prompts to remind smokers about the impacts of cigarette litter, and to appropriately dispose of cigarette butts long after a short-term campaign has ended. Promotional items that serve a function as well as promote a message are likely to have more impact than those that would only be likely to be used once and then forgotten. Promotional items can be distributed directly through face-to-face interventions or at popular community centres (such as libraries and Town Halls). Partners should also be given promotional items to promote the campaign. Examples of promotional resources include: beer mats, car bumper stickers, car air fresheners, mint lollies and wallet cards.

Use the local media

43. Local media should be provided with a media release several days before the campaign starts. Local media are an important, cost-effective way to promote your anti-littering message to the local community. If you can provide a 'hook' to the media and a good photo opportunity, they are more likely to run with your story. They should be invited to attend the launch and a high-ranking person within your organisation should be made available for an interview.
44. If you are using enforcement as part of your campaign, use the local media to promote any fixed penalty notices that you have issued.

Conduct a launch

45. After all preparations, the campaign can finally begin. A launch could be conducted on the first day of the campaign, in order to galvanise support and attract attention to the issue. All partners, local media and relevant staff should be invited to attend the launch. It should be held in a public place that is relevant to the campaign, such as an open pedestrian shopping area. The launch could consist of a short speech about the activities being conducted during the campaign week, giveaways of promotional items and a strong anti-littering message. The launch should be

decorated with banners and posters to enable photo opportunities for local print media.

Undertake campaign activities

46. The education activities that you implement during the campaign are crucial to changing the littering behaviour of smokers. Promotional activities at litter hotspots should be undertaken at specific times during the day. If you are undertaking face-to-face interventions, ensure that the education team meets briefly at the end of each day to discuss their successes and any problems they encountered.

During campaign monitoring

47. It is useful to carry out monitoring during your campaign period to establish how effective the campaign is being. Please see the Appendix for details of how to carry out the monitoring.

Post-campaign monitoring and reporting

48. Now that your campaign is complete you can quantify your success by undertaking post-campaign monitoring. See the Appendix for a description of the methodology you could use to measure your campaign.
49. The outcomes of the campaign should be compiled in a brief report for submission to your organisation, the partners who participated in the campaign and any funding bodies who supported your campaign. The report should make a note of the outputs from the campaign (e.g. posters, promotional items) and outcomes (reduction in cigarette litter). It is important to understand the outcomes of your campaign in order to improve future campaigns and maintain a cleaner environment.

Promote your success and identify learning

50. You may wish to promote the success of your campaign to the local media through a media release, and internally through your organisation's intranet. You also may wish to

share the positive outcomes of your campaign with your community through advertisements in the local newspapers or through regular communications channels (such as community newsletters). This encourages the community to maintain a clean environment and demonstrates the usefulness of such campaigns to ratepayers. If possible, you may wish to apply for an environmental award if you can prove that your campaign was successful. Not only is this a positive way to reinforce and extend the message of your campaign to the wider community, this recognition helps to instil pride in your ratepayers and your colleagues, rewarding their efforts.

Enforcement Legislation – Tackling irresponsible disposal

51. Powers and duties for dealing with litter are set out in the Litter (Northern Ireland) Order 1994 (the 1994 Order), as amended by Part 3 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (the 2011 Act). The following is a summary of the measures available for dealing with smoking litter:

Offence of dropping litter

52. Under Article 3 of the 1994 Order it is an offence to throw down, drop or otherwise deposit in, into or from any place open to the air, and then leave litter. A person found guilty of the litter offence may be fined up to level 4 on the standard scale (currently £2,500) in a court of summary jurisdiction. Article 6 of the 1994 Order allows an authorised officer of a district council to issue fixed penalty notices as an alternative to prosecution.

Fixed Penalty Notices

53. Fixed Penalty Notices (FPNs) can be an effective enforcement tool as an alternative to prosecution. The number of FPNs being issued for litter has increased markedly in the last few years and we are likely to see that trend continue. When enacted, the 2011 Act will introduce a greater degree of flexibility into the FPN regime. The level of the FPN will be able to be set locally by district councils

within a range of £50-£80, with an option for a reduced rate for early payment. In addition, the 2011 Act will enable officers not in the direct employment of the district council, such as a cleansing contractor, to be authorised to issue FPNs for this offence.

54. Another power that will be introduced is the offence of an offender either failing to give a name and address or of giving incorrect details to an authorised enforcement officer. It is highly recommended that district councils should develop an enforcement strategy to ensure that consistent and appropriate penalties are issued. This will also ensure that in the event of non-payment of a FPN, the original offence is pursued through a court of summary jurisdiction.

Duty to clear land of litter and refuse and to keep highways clean

55. Article 7 of the 1994 Order imposes a duty on certain bodies for various descriptions of 'relevant land' and 'relevant roads' to ensure that these are, so far as is practicable, kept clear of litter and refuse, and in the case of roads, clean. In respect of streets and other public areas, district councils' must meet these requirements for 'relevant land', that is, publicly accessible land that is under their direct control, and 'relevant roads' maintainable at the public expense. The Department's Code of Practice on Litter provides practical guidance on the exercise of this duty, including response times for cleaning areas in which standards have fallen below an acceptable level.
56. In meeting these requirements district councils' will be expected to remove cigarette litter from streets and other public areas they have responsibility for.

Street Litter Control Notices

57. Articles 13 and 14 of the 1994 Order give district councils' the power to tackle street litter generated as a consequence of activities on adjacent premises. The legislation enables district councils' to serve Street Litter Control Notices (SLCNs) requiring businesses to clear up the litter and implement measures to prevent the land from becoming

defaced again. The list of premises for which district councils' may issue notices is set out in the Street Litter Control Notices Order (Northern Ireland) 1995, as amended by the Street Litter Control Notices Order (Northern Ireland) (Amendment) Regulations 2011, and the notices may be served for any type of litter that is causing defacement of the street, including smoking-related litter.

58. By virtue of the new Article 13(3A) of the 1994 Order, as inserted by the 2011 Act, notices can also now be served in relation to vehicles, stalls and other moveable structures used for commercial or retail activities on a street. The 1994 Order has also made it immediately an offence to fail to comply with the requirements specified in a Street Litter Control Notice. A person found guilty of this offence may be given a fine up to a maximum level 4 (currently £2,500), or issued with a fixed penalty notice.
59. Full guidance covering litter legislation and fixed penalty notices for local environmental offences can be accessed through the following links:

Litter:

www.doeni.gov.uk/environment/.....

Fixed Penalty Notices:

www.doeni.gov.uk/environment/.....

Appendix

Cigarette end counts

To assist the evaluation of any smoking-related litter campaign, it is essential to measure whether there has been a reduction in cigarette ends dropped on the ground. To do this successfully, 'hotspot' sites need to be chosen and cleaned so that any cigarette litter build-up can be monitored. This process needs to be repeated over a set period so that improvements can be measured.

Choosing your survey transects

Within your district, choose a minimum of five locations that are hotspots for cigarette litter. These should be in primary or secondary retail areas. The size of the area should be 25m² (e.g. around bus stops) or 25 metres in length (e.g. high street).

To get busy footfall, the types of area to include might be: -

- The high street or a parade of shops;
- Outside nightclubs/bars;
- Outside cinemas/bingo halls;
- Outside restaurants/ fast food outlets;
- Bus or train transport areas;
- Public buildings/office blocks;
- Car parks; and/or
- Road junctions.

How big should the area be?

Once the survey areas have been chosen, make a simple diagram illustrating the survey area or (unobtrusively) mark them out. Please note features such as type of bins, door entrances, etc.

Survey dates and times

Suggested smoking related litter monitoring dates are: -

- Pre-campaign – Three times a week for one week period;
- During the campaign period – Three times a week for a two week period (or whatever the length of the campaign); and
- Post-campaign – Three times a week for one week period.

The monitoring should be conducted at least once a day at the same time. Take into consideration the times of street cleaning so, for example, if one of the transects is cleaned every three hours, monitor the litter before each clean up during that day.

When filling in the survey form to record the cigarette litter, please remember to note the time of the day of the week you are referring to.

The transect survey

A model survey form for you to use is provided at the end of this Appendix. At each of the chosen transects, the surveyors (it is preferable for surveyors to work in pairs) should: -

- Count the individual cigarette ends deposited within each survey area – surveyors may find that a hand-held counter will assist in this;

- Note bins in or in proximity to the survey area, especially if they are dedicated cigarette bins, bins with stub plates or tab tidies;
- Note the weather conditions and any other information they think relevant e.g. what amount of cigarettes are new (i.e. 3D) or the proportion of cigarettes squashed flat, shops selling cigarettes nearby, etc.; and
- Take photographs of the sites at each stage.

Monitoring cigarette bin usage before, during and after the campaign

If possible, monitor the usage of up to five dedicated cigarette bins in hotspot areas for cigarette litter before, during and after the campaign period.

The bins should be monitored at the same time on the same days of the week during the weeks stated below. As with the litter monitoring, the contents of the bins should be monitored at a consistent time each day and measured by weight.

- Pre-campaign – Three times a week for a one week period;
- During the campaign period – Three times a week for a two week period (or whatever the length of the campaign); and
- Post-campaign – Three times a week for a one week period.

Cigarette litter monitoring form

DISTRICT COUNCIL NAME:

Survey area name/code:

Survey area size:

Surveyor(s):

Weather observations:

Any cigarette disposal facilities near or in the area (e.g. dedicated cigarette bin, bins with stub plates, tab tidies, etc.). Please detail type of facility and closeness to survey area:

Date	Time	Cigarette end counts
Comments		
Comments		
Comments		

**DRAFT REGULATORY IMPACT
ASSESSMENT ON EXTENSION OF STREET
LITTER CONTROL NOTICES**

Department of the Environment

1. Title of Proposal

The amendment of Articles 13 and 14 of the Litter (Northern Ireland) Order 1994 (1994 No. 1896 (NI.10)) (the 1994 Order) and the Street Litter Control Notices Order (Northern Ireland) 1995 (S.R. 1995 No. 42).

2. Purpose and Intended Effect

2.1 Objective

The objective of this proposal is to reduce litter on the streets and therefore help in the creation and maintenance of clean, safe and green neighbourhoods and public spaces.

2.2 Background

Articles 13 and 14 of the 1994 Order give district councils the power to issue Street Litter Control Notices on premises that have a frontage on a street, and outside which litter is causing defacement of the land.

Article 13(1) states that ‘A district council may, with a view to the prevention of accumulations of litter in and around any street or open land adjacent to any street, issue Notices (“Street Litter Control Notices”) imposing requirements on occupiers of premises in relation to such litter, in accordance with this article and Article 14”.

Article 13(2) states that the Notices must be served on the occupier of the premises, or, if the premises are unoccupied, on the owner of the premises.

A number of criteria must be satisfied before a Notice can be issued:

(1) The premises must have a frontage on a street (Article 13(2)).

(2) The council must be satisfied that **at least one of the following** criteria applies (Article 13(2)):

(i) There is **recurrent defacement** by litter of any land,

being part of the street or open land adjacent to the street, which is in the vicinity of the premises, or

(ii) The condition of any part of the premises which is open land in the vicinity of the frontage is, and if no notice is served is likely to continue to be, **detrimental to the amenities of the locality** by reason of the presence of litter, or

(iii) There is produced, as a result of the activities carried on the premises, quantities of litter of such nature and in such amounts as are **likely to cause the defacement** of any part of the street, or of open land adjacent to the street, which is in the vicinity of the premises.

(3) The Notices can only be issued in respect of certain types of premises. Article 14(1) provides a power for the Department to prescribe, by Order, 'the descriptions of commercial or retail premises in respect of which a Street Litter Control Notice may be issued'. This power has been exercised in the Street Litter Control Notices Order (Northern Ireland) 1995 (SR 1995 No. 42). There is no restriction in the 1994 Order (as amended) on the type of litter for which the provisions may be used, but the current list of premises is directed at dealing with food and drink packaging and other litter caused by eating 'on the go' as well as litter from bookmakers premises, cash points and lottery tickets dropped outside shops.

Land to which the Notice may apply

Article 13(3) states that, in addition to identifying the premises and grounds under which it is issued, the Notice must 'specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street'. This includes a vehicle or stall or other moveable structure which is used for one or more commercial or retail activities. Under Article 14(1), the Department has the power to prescribe descriptions of land, and the maximum area that can be included. Again, this is provided in the Street Litter Control Notices Order (Northern Ireland) 1995 and can be:

- Land in the open air which is part of the premises;

- Part of a street, other than the carriageway when it is open to vehicles;
- Relevant land of a district council; or,
- Land under the direct control of any other district council.

It also states that the land specified must be within 100 metres of the premises, except in the case of automated teller machines, in which case it must be within 10 metres.

Requirements of the Notice

The requirements that may be imposed by a Notice are set out in Article 14(4). They must be 'reasonable' and relate to the clearance of litter from the specified area. In particular, they may require the provision or emptying of bins or for litter to be cleared up at specified times or intervals. The "Guidance on Litter" published by the Department on these provision states, at paragraph 6.11 'In order to be 'reasonable' district councils will need to consider the health and safety implications and cost effectiveness of any requirements they are proposing to make, as well as their own role in carrying out street cleansing'.

Sub-paragraph (6) sets out the mechanism for making representations on a proposed Notice. The district council is required to inform the person on whom the Notice is to be served and allow him/her a period of 21 days in which to make any representations. The district council must take any such representations into account in deciding on the content of the Notice and its issue. Sub-paragraph (7) allows a person on whom a Notice is served to appeal to a court of summary jurisdiction against the Notice.

Scope of the existing and proposed measures

The legislative framework therefore sets out very specific circumstances in which Street Litter Control Notices may be used. They can only be served on a premise that has a frontage on a street and outside which litter is creating a serious impact on the condition of that area, so as to cause defacement or to be detrimental to the amenity of the locality. The guidance issued by the Department on litter states that 'district councils should work in

partnership with others to resolve the problem of street litter and seek to remedy it, where possible, through joint working and good management practice', therefore Street Litter Control Notices are suitable for use only where such attempts at joint-working have been ineffective. In specifying 'reasonable requirements' in the Notice district councils must consider their own duties to clear litter from 'relevant land', they must also take into consideration any issues of health and safety or security that may be raised by the occupier (or owner).

If district councils were able to issue Street Litter Control Notices in respect of offices, pubs, bars, cafes, restaurants and other eating and drinking venues, not currently covered by the provisions, it would give them the power to place greater responsibility onto the occupiers or owners of those premises to clean-up the smoking-related litter in the area immediately around them, and/or install appropriate disposal facilities, where there is a significant problem with this form of littering and it is causing defacement of the area. This proposal is consistent with changes to be introduced by the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 which follows the polluter pays principle, by improving the powers available for district councils to take action against those caught dropping litter as well as requiring businesses and landowners to play their part in keeping land and premises clean and in clearing-up.

3. Consultation

This RIA is subject to a full 12-week public consultation. The consultation responses will be analysed with a view to identifying any new significant costs that are not identified in this draft RIA.

4. Options

Option 1 – No change - continue to allow district councils to issue Street Litter Control Notices only in respect of premises currently listed in the Street Litter Control Notices Order (Northern Ireland) 1995.

Option 2 – Extend the list of premises to allow Street Litter Control Notices to be issued in respect of all pubs, bars, cafes, restaurants and other eating and drinking venues, including a vehicle, stall or other moveable structure, outside which litter of all types may be

dropped by customers. This would be achieved through an amendment to the Street Litter Control Notices Order (Northern Ireland) 1995.

The Department's preferred option is to introduce the amendment contained in option 2.

5. Costs and Benefits

5.1 Sectors and groups affected

The key sectors and groups affected are:

- (i) District councils who might issue additional Street Litter Control Notices;
- (ii) Businesses which could be affected by additional Street Litter Control Notices; and
- (iii) The public, who are suffering from litter on the street.

Option 1 – For the purpose of this draft RIA the baseline is the existing form of Street Control Litter Notice as described in section 4 above. Currently, when litter and smoking-related materials are dropped on the street outside eating and drinking venues, district councils are required to clear up the litter under Article 7 of the 1994 Order.

At present Street Litter Control Notices can only be placed on the following establishments:

- (a) premises used wholly or partly for the sale of food or drink for consumption off the premises;
- (b) premises used wholly or partly for the sale of food or drink for consumption on a part of the premises forming open land adjacent to the street;
- (c) premises used for wholesale or retail sale of any goods on a part of the premises forming open land adjacent to the street; and
- (d) other commercial or retail businesses listed in the Street

Litter Control Notices Order (Northern Ireland) 1995 which have a frontage onto a public street, such as a service station or entertainment venue.

For all other eating and drinking premises, district councils are solely responsible for clearing litter from the street and providing any disposal facilities.

Option 2 – This option would extend the number of businesses covered by the Street Litter Control Notice provisions as described in Option 1 to include **any** eating or drinking venue with a frontage on the street which has a **recurrent defacement problem** from litter. This would extend the scope of Street Litter Control Notices to include eating and drinking venues that sell food or drink for consumption exclusively on the premises, including a vehicle or stall or other moveable structure which is used for one or more commercial or retail activities.

The costs and benefits of option 2 are considered in the section below as the implications are similar for those groups and sectors that would be affected.

5.2 Analysis of Costs and Benefits

All the costs and benefits in this section, in accordance with guidance, are presented in terms of the impact to society as a whole. Therefore, they do not take account of transfers between groups, such as fixed penalty fines or transfers of liability. A relevant issue with this methodology in this case is that it does not highlight the impact of passing the liability associated with keeping an area clean from the district council to businesses.

This transfer of liability from the district council to the polluting undertaking, as highlighted previously, ensures that businesses face the correct incentives to employ all cost justified preventative measures. This transfer of liability creates a net benefit to society as new preventative measures are employed to reduce the cleaning costs, as set out below.

Table 1 below presents the estimated annual value of transfers from district councils to businesses. These figures are based on an annual cleaning cost of around £700 per site (see option 1 – Costs, below). It should, however, be noted that this transfer does

not take into account the potential reduction in cleaning costs, which are estimated to halve the annual cost.

In addition to the transfer of the annual cleaning costs, the annual transfers also include fixed penalty fines which are issued in the event of non-compliance with Street Litter Control Notices (more information is provided in Section 8 – Enforcement and Sanctions). This results in a transfer between the businesses and the district councils.

Table 1: Annual transfers between district councils and businesses

	Number of Street Litter Control Notices issued per district council		
	5	10	20
Cleaning costs	£91,000	£182,000	£364,000
Fixed penalty fines	£2,600	£5,200	£10,400

Option 1 – Costs

Whilst it is not possible to estimate the potential increase in the number of littered sites in the absence of the extension of the Street Litter Control Notice, we have estimated that a single site would impose a clean up cost of around £700 per year¹.

If, for example, there were to be one additional site in each district council, in the absence of the extension of Street Litter Control Notices, this places an additional total annual cost of around £18,200 on district councils. Increased littering may also incur a cost for businesses and the public if litter accumulates, resulting in a reduction in the quality of the local environment and negative impact on the economy.

¹ This figure is based on such sites requiring 20 minutes cleaning per day of litter at the current minimum wage of £5.93 per hour.

Option 1 – Benefits

There are a few minor benefits of maintaining the status quo, however, these benefits are qualitative as they could not be quantified. The identified benefits include:

- No additional costs to district councils of issuing further Street Litter Control Notices;
- No additional costs to businesses of further cleaning;
- Stability from maintaining the status quo; and
- There would be no costs to make the necessary legislative changes.

Option 2

Articles 13 and 14 of the 1994 Order provide district councils with the power, rather than an obligation, to issue Street Litter Control Notices. Therefore, district councils or businesses only face increased costs when a decision is made to utilise this power. As Notices can only be issued where there is a significant problem with litter impacting on the quality of the local environment this means that the number of Street Litter Control Notices will be very limited.

An informal survey of 16 randomly selected local authorities in England was carried out by DEFRA to estimate how many Street Litter Control Notices they were likely to issue per year following the extension of the Notices to include all eating and drinking venues as well as the occupier (or owner) of office buildings. The analysis of costs and benefits presented below is based on the responses from this survey. However, it must be noted that as only a sample of local authorities in England were consulted significant uncertainties exist around the results. Therefore, the figures presented below should be considered as illustrative only.

The survey found that on average 1-2 Street Litter Control Notices would be issued by local authorities per year with a maximum suggested level of 15. To address the uncertainties around this

figure, a range of 5 to 20 Notices per district council per year has been considered.

The cost benefit analysis is presented in two formats. The summary section presents the total costs and benefits for all the Street Litter Control Notices² issued by all 26 district councils per year. The detailed section presents the costs and benefits to a district council, business and the public of a single Street Litter Control Notice.

Option 2 – Costs

The analysis suggests that the impact of this option would impose relatively small costs on both district councils and businesses.

Table 2 below, presents the total costs of the regulation in Northern Ireland per annum based on the resource costs to businesses and the administrative costs to district councils.

The costs presented below do not consider the impacts of issuing a fixed penalty notice to non-compliant businesses as this is a transfer payment between businesses and district councils. Depending on the number of fixed penalty notices issued per year, these costs to businesses could range between £2,600 - £10,400.

² Assuming each district council issues 5, 10 or 20 Street Litter Control Notices per year, the total number of Street Litter Control Notices issued across NI is 130, 260 or 520 per year

Table 2: Estimated total costs by number of Street Litter Control Notices issued per district council per year

Number of Street Litter Control Notices issued per district council per year	Total cost per year to district councils in Northern Ireland	Total cost to businesses in Northern Ireland over 5 years³	Total cost of regulation for Street Litter Control Notices issued in a year (excluding enforcement costs)
5	£58,500	£20,000-£35,000	£78,000-£100,000
10	£117,000	£30,000-£100,000	£140,000-£200,000
20	£234,000	£90,000-£150,000	£300,000-£500,000

Costs to district councils of a single Street Litter Control Notice

Estimates obtained from the survey of local authorities in England suggest that the cost of issuing Notices, including investigation, appeal, follow-up and administration is around £450 per Notice.

Two key conservative assumptions have been made to ensure that the costs to district councils are likely to be over estimated in this calculation. These assumptions have been made to ensure that the results of the cost benefit analysis, is pessimistic. These assumptions are:

³ Costs to businesses are considered over a 5 year period to be consistent with the benefits estimation that makes the conservative assumption only to consider the benefits over this period.

- That a Street Litter Control Notice will only last for 5 years and therefore administrative costs for district councils would be incurred every 5 years for the duration of a Street Litter Control Notice; and
- That businesses do not voluntarily comply with the request before a Street Litter Control Notice has been issued, thereby reducing the cost imposed on district councils.

However, in addition to the administration costs of issuing the Street Litter Control Notices, district councils will face enforcement costs should businesses not comply with the Street Litter Control Notice. However due to the unavailability of costs to district councils of enforcing a Street Litter Control Notice in the courts, this is not presented in the cost section of this RIA. However, it is likely that the level of compliance is going to be high⁴ and therefore the court costs will be low. Additionally, the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (the 2011 Act) will introduce the option of issuing fixed penalty notices for non-compliance, from which district councils may retain the receipts for further enforcement. Such fines act as a transfer rather than a real cost as although the penalties would appear as costs to the business they are revenue to district councils.

Cost to businesses

When district councils issue Notices to businesses, the businesses have a choice of complying with the Notices or challenging the Notice. If it is assumed that 80%⁵ of businesses will comply with the Street Litter Control Notice, the remaining 20% will be issued with a fixed penalty notice. When faced with a fixed penalty, businesses may either choose to pay the penalty or pursue the matter in the courts. For the purpose of this RIA, we have assumed the upper bound i.e. 80% compliance rate of the fine therefore 96% of the total businesses face cleaning costs due to this measure while 4% challenge the Notice in the courts.

⁴ The compliance rate is estimated at around 95% based on compliance data presented in the “cost to business”.

⁵ This is based on the assumption made in the 2011 Act draft RIA of an 80% compliance rate for the Street Litter Control Notice.

Costs to businesses if they comply with Street Litter Control Notices

Businesses who comply with the requirements of the Street Litter Control Notices have to ensure that the defacement does not occur. The Notice may require them to achieve this through preventative measures, such as installing smoking bins outside their premises, or through additional cleaning of litter from publicly accessible land within a specified distance of the premises (100m). This transfers the cleaning cost from the district council to the source of the litter.

Installing litter bins

Installing disposal solutions would impose a front loaded one-off cost on business, with, for example, smoking bins ranging from around £30 to £100. The size and number of bins required would vary depending on the premises and number of individuals using it. For simplicity this RIA assumes that a single bin would suffice. However, where sites require more than one bin we may expect the potential benefits to be proportionately increased. Maintaining and emptying bins is an ongoing but minimal cost (assumed at between 5 and 10 minutes work a week), and in some cases district councils will empty wall-mounted bins outside businesses as part of their cleansing service.

Costs to businesses if they do not comply with Street Litter Control Notices

In the event of non-compliance with a Street Litter Control Notice, a district council can issue a fixed penalty notice to the occupier (or owner) of the premises, with recourse to the courts if it is unpaid. For those who do comply with the fixed penalty notice, they pay the fine of £100 as well as complying with the Street Litter Control Notice. However, as district councils are entitled to the receipts of these fines, it is a transfer payment between the businesses and district councils i.e. the fixed penalty notices appear as costs to businesses and benefits to district councils.

The cost to businesses if they choose to pursue the matter in the courts will depend on the probability of the courts issuing a fine and the level of the fine and is therefore not considered here.

Benefits of option 2

Improving district councils' power to deal with litter may have wide-ranging economic, environmental and social benefits. However, there is a significant lack of relevant information available. These gaps include both monetary values to be applied to benefits (i.e. the disamenity value of litter) and the quantification of benefits (i.e. number of increased tourists due to reduced litter).

The illustrative annual benefits of this measure, based on the number of Street Litter Control Notices issued to businesses per district council, is presented in Table 3 below. The range of the number of Street Litter Control Notices issued per year for all district councils has been set as between 130 to 520, although as set out previously we only expect around 100 to be issued.

Table 3: Total benefits by number of Street Litter Control Notices issued per district council per year

Number of Street Litter Control Notices issued per district council per year	Reduction in cleaning costs	Reduced sightings of litter	Reduced fire costs	Total benefits for this measure
5	£27,000- £35,000	£82,000	£8,000- £10,000	£115,000- £120,000
10	£54,000- £70,000	£160,000	£8,000- £10,000	£200,000- £240,000
20	£108,000- £140,000	£320,000	£8,000- £10,000	£430,000- £450,000

This evaluation presents the benefits information in two parts, the first part sets out the benefits which have been quantified and monetarised and the second describing the qualitative benefits.

It must be noted that the quantified benefits have been estimated making conservative assumptions where data is not available. The key assumption being that the benefits associated with issuing a Street Litter Control Notice only lasts for 5 years. In reality Street Litter Control Notices are not time limited and therefore the actual benefits are likely to be greater than presented here. All the other assumptions are described in detail with justifications below.

Quantified and monetarised benefits

The three benefits which have been monetarised are:

- Public benefits from reduced litter;
- Reduced cleaning costs from preventative measures; and
- Lower fire damage risk.

Public benefits from reduced litter

Significant amounts of litter, as would be necessary to consider a Street Litter Control Notice, are unsightly. As such it imposes disamenity costs on anyone who observes such a site. While this cost is reduced by district councils' efforts to clean these sites the recurrent nature of litter in such sites means that there will be periods between cleaning where costs are imposed on the public. By placing the responsibility on the establishment (i.e. pubs/cafes) outside of which there is this recurrent defacement, this disamenity cost should be reduced as more appropriate cleaning techniques and preventative measures are employed.

Unfortunately data is not currently available to fully quantify the value of this potential benefit. Therefore, this section has made a number of very conservative assumptions to quantify the likely benefits.

For the purpose of this illustrative example, we made the following assumptions:

- The disamenity cost imposed per viewing is 2p⁶;
- The site is viewed⁷ 30 times per day;
- The lifetime of a Street Litter Control Notice of 5 years⁸; and
- Duration where disamenity is incurred is 4 days a week⁹.

Based on these assumptions the disamenity value over five years is £626 per site.

Reduction in cleaning costs of litter

The cost of cleaning can be reduced substantially through simple preventative measures. For example, the provision of dedicated litter bins can reduce the resultant litter substantially.

The illustrative example below shows the impact of a Street Litter Control Notice in reducing costs associated with litter.

⁷ A valuation of 2p is unlikely to be over estimate as research shows that clean streets are regarded as being in the top most important issues to people's quality of life. There is also a growing body of evidence that well-maintained environments free from litter can increase inward investment and attract workers and new residents to an area.

⁷ It may be that the viewings of the litter may be made by different people or by the same person. We assume here that there is no diminishing marginal disutility per viewing such that each consecutive viewing to an individual causes the same level of disamenity.

⁸ The lifetime of 5 years is considered to be equal to the lifetime of the cigarette bin, which may be out outside businesses to reduce litter.

⁹ Based on district councils cleaning occurring once a week and after cleaning it takes 3 days for the litter to build up to a level which causes public disamenity.

The assumptions made for this example are:

- It takes 30 minutes to clean a littered site;
- Cleaners are paid the minimum wage of £5.95 per hour;
- New bin reduces cleaning time by between 30% and 50%¹⁰; and
- The lifetime of a bin and Street Litter Control Notice is 5 years.

Based on the assumptions above, the reduction in the cost of cleaning a littered site is between £209 and £358. Given the scale of these savings and the relative costs of a bin we would expect the majority of businesses to choose to install litter bins.

Non quantitative benefits of option 2

In addition to the benefits quantified above, there are other benefits which have not been quantified or valued. The ability for district councils to demand greater co-operation from businesses may result in a number of improvements for the private and public sectors. They are briefly described below:

Private sector benefits

Reduced litter has the additional benefits of improving the image of the neighbourhood and therefore attracting more tourism and therefore increased spending in the area. Reduction in litter from an area can have an effect on individual behaviour. As individuals are more likely to throw litter to an already defaced place and less likely to throw litter in a clean area, therefore a cleaner area is likely to stay cleaner for longer. Clean streets and neighbourhoods have wider benefits to businesses in the area as it improves business image and encourages increased investment in the local business.

¹⁰ Based on an 80% reduction in the level of litter.

Public sector benefits

In addition to a reduction in cleaning costs for district councils and reduction in fire hazards, these Notices are likely to have other benefits as well. A cleaner neighbourhood will also lead to a reduction in fear from anti-social behaviour. Clean streets and neighbourhoods also lead to an increased sense of civic pride and improved community interaction. Overall, a cleaner neighbourhood will lead to a better quality of life for the individuals living in that area.

Therefore, it is evident that in addition to the benefits which have been valued and quantified there are a large number of benefits from this proposal which have not been valued. So, a combination of the benefits of the measure will quite evidently be higher than the costs of the measure.

6. Small Firms Impact Test

All businesses with fewer than 25 full-time employees are regarded as being small businesses for the purposes of this draft RIA. Many businesses affected by this proposal are likely to be small firms.

This section deals with some likely impacts on small businesses resulting from this proposal.

The potential costs that may be incurred on small businesses as a result of the extension of the Street Litter Control Notice provisions include the installation of litter bins (portable or wall-mounted) ash trays and/or requirement to clear up litter from outside the premises. They would also be responsible for emptying any litter bins that are installed, unless arrangements for emptying are made with the district council. It is, however, unlikely that such costs would jeopardise the viability of a small business, given that the estimated total cost of a 5 year Street Litter Control Notice on a business is estimated at between £150 and £330.

Section 5.2 of this draft RIA outlines the likely benefits associated with the proposal. Weighted against the potential costs are the private sector benefits to be gained from cleaner streets resulting in an improved business image and increased investment.

The current proposal is to extend an existing regulation; it does not involve the introduction of any new powers. The Department expects district councils to work in partnership with local businesses first to tackle the problem of street litter, using Street Litter Control Notices only as a last resort. Draft guidance on the 1994 Order will set out the level of defacement that would be required in order to justify a Notice being issued. The cleanliness of the land would need to have fallen to at least a Grade C (widespread distribution of litter with minor accumulations) in accordance with the Code of Practice on Litter before a district council considers using the Street Litter Control Notices powers.

Street Litter Control Notices can already be issued to small businesses covered under option 1 of this draft RIA, such as fast food takeaways, bakeries, newsagents and local grocery stores. Very few Street Litter Control Notices have been issued by district councils.

Street Litter Control Notices form one component of a package of legislative tools available to district councils for dealing with the litter problems in their area, including the power to issue fixed penalty notices to those individuals caught dropping litter. Under the 2011 Act, new powers will be provided to enable district councils to take more immediate and effective action to improve the quality of the local environment. New measures being introduced in to the 1994 Order by the 2011 Act will enable district councils and other enforcement agencies to take swifter action against those responsible for the commission of low level environmental offences, and to require the clear-up of litter. Land and property owners are expected to take some responsibility for the condition of their land and property and the impact it has on the local area, but only at the same time as the behaviour of those committing the offences is tackled.

District councils would be expected to inform the businesses in their area of any changes to the legislation. The Department will issue a "Guidance on Litter" document to reflect this and in this guidance shall ensure that district councils must include information about how they intend to use Street Litter Control Notices in their enforcement strategies, and ensure this is widely published both to businesses and the local community.

7. Competition Assessment

There are no perceived competitive or competitor impacts resulting from this measure.

8. Enforcement and Sanctions

If a business refused to comply with the Notice, prior to measures in the 2011 Act coming into force, the district council had to apply to a court of summary jurisdiction for an Order to require the person to comply with the Notice. With the coming into operation of the 2011 Act it will immediately be an offence to fail to comply with the requirements of the Notice so that a prosecution may be sought. A person found guilty of this offence may be given a fine of up to a maximum level 4 (currently £2,500) in a court of summary jurisdiction. Fixed penalty notices may now also be issued as an alternative to prosecution by an authorised officer of a district council. Under Article 14A(4)(a) of the 1994 Order the district council may set the level of the fixed penalty, within a range of £75 to £110 prescribed by the Department in regulations. Alternatively, a default amount of £100 applies.

Action can only be taken for the failure of the occupier or owner to carry out measures detailed in the Notice. For example, if a business is required to install a bin and does so, it cannot be held responsible for the failure of individuals to use it. District councils should utilise their powers under Articles 7 and 8 of the 1994 Order to enforce the offence of dropping litter.

As mentioned in the costs and benefits analysis of this RIA, there is a cost transfer associated with enforcement action from businesses to district councils. The amount of this transfer will depend on the level of compliance of businesses with Street Litter Control Notices. It is assumed there will be a compliance rate of 80% and the remaining 20% of businesses will be issued with a fixed penalty notice. Based on the default level of £100 for these fixed penalty notices, the total transfer from businesses to district councils would be in the range of £2,600 to £10,500 with a central estimate of £5,300 based on 5 Street Litter Control notices being issued per council per year.

However, of those businesses issued with a fixed penalty notice there will be a number that choose not to pay the fixed penalty and

will instead be subject to prosecution in a court of summary jurisdiction. We assume that 75% to 80% of businesses will pay the penalty rather than face prosecution. For the 15% to 20% of businesses issued with a fixed penalty notice that decide not to pay it, they may subsequently face a fine in a court of summary jurisdiction. The level of the fine awarded may be up to £2,500, but based on figures from actual court proceedings in the UK, a level of £700 is more likely. Based on the central estimate of 130 Notices being issued per year, it is expected that 4% of businesses or 5 in total would end up facing these court costs.

9. Monitoring

The Department requests information from district councils on the number of fixed penalty notices issued for environmental crimes on an annual basis. This includes details of the number of unpaid fines and cases of non-payment pursued to a court of summary jurisdiction. As of April 2012, data will be collected on all fixed penalty provisions introduced by the 2011 Act, including statistics on fixed penalties issued for failure to comply with a Street Litter Control Notice. The Department will also be seeking information on the number of Street Litter Control Notices issued by district councils as part of ongoing monitoring and evaluation of the use and effectiveness of new and amended powers being introduced by the 2011 Act.

10. Summary and Recommendation

This proposal would allow district councils to require the occupiers/owners of pubs, bars, restaurants, cafes and other food and drink venues to play a greater role in dealing with the problem of litter.

The summary of costs and benefits is presented in **Table 4** below:

Table 4: Summary of quantified costs and benefits

Number of Street Litter Control Notices (per district council per year)	Total cost	Total benefit	Net Benefit
5	£78,000- £100,000	£115,000- £120,000	£15,000 - £42,000
10	£140,000- £200,000	£220,000- £240,000	£20,000 - £100,000
20	£300,000- £500,000	£430,000- £450,000	£130,000- £150,000

The analysis of costs and benefits in this draft RIA shows that this proposal will result in a net benefit to society overall, since Notices will only be issued in a minority of cases where there is a significant problem with litter causing defacement of land on, or in the vicinity, of a street. The costs imposed on both district councils and businesses would be relatively small and outweighed by the benefits associated with improved amenity, reduced cleaning costs from preventative measures and reduced fire risk. It is recommended that the amendment in option 2 is pursued. A draft Statutory Rule which would give effect to the necessary amendment is attached.

2011 No.

ENVIRONMENTAL PROTECTION

**Street Litter Control Notices (Amendment) Order (Northern
Ireland) 2011**

Made - - - - - ***

Coming into operation - - - - - ***

The Department of the Environment, makes the following Order in exercise of the powers conferred by Article 14(1) of the Litter (Northern Ireland) Order 1994⁽¹⁰⁾.

Citation and commencement

1. This Order may be cited as the Street Litter Control Notices (Amendment) Order (Northern Ireland) 2011 and shall come into operation on the XXXX 2011.

Amendment

2. In Article 2 (specified descriptions of commercial and retail premises) of the Street Litter Control Notices Order (Northern Ireland) 1995 ⁽¹¹⁾ for paragraph (b) substitute—

“(b) premises used wholly or partly for the sale of food or drink for consumption on the premises,”

Sealed with the Official Seal of the Department of the Environment on ***

Denis McMahon
A senior officer of the
Department of the Environment

⁽¹⁰⁾ 1994(N.I.10)
⁽¹¹⁾ 1995(N.I.42)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Street Litter Control Notices Order (Northern Ireland) 1995 (S.R.1995 N.I.42). Article 2 of that Order prescribes the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued. Paragraph (b) of that Article is replaced such that premises used wholly or partly for the sale of food or drink for consumption on the premises are prescribed.

ANNEX E

EQUALITY SCREENING

Background

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity between:

persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;

men and women generally;

persons with a disability and persons without; and

persons with dependants and persons without.

In addition, without prejudice to its obligations above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

Screening Analysis

The purpose of this exercise is to assess whether or not the Department's proposals to amend and update the current litter system with a new litter control regime may or may not have a differential impact on any of the section 75 categories. It has been performed in accordance with the Department's Equality Scheme approved in 2001. It is based upon the criteria contained in the guidance for performing the 'screening' to identify if any of the nine categories of groups identified in section 75 might be affected by the policy proposals (religion, political opinion, race, age, marital status, gender, sexual orientation, disability, dependants).

The screening analysis is summarised below.

1. Is there any indication or evidence of higher or lower participation or uptake by different groups within any of the nine categories?

NO

2. Is there any indication or evidence that any of the section 75 categories have different needs, experiences, issues and priorities in relation to this policy issue?

NO

3. Have consultations in the past with relevant groups, organisations or individuals within any of the section 75 categories indicated that policies of this type create problems that are specific to them?

NO

4. Is there an opportunity to better promote equality of opportunity or community relations by altering the policy or by working with others in Government or in the larger community in the context of this policy?

NO

Conclusion

As part of its Clean Neighbourhoods agenda, the Department is considering ways to tackle environmental problems relating to litter. Given that the overall aim of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 is to improve the quality of life for all of the people of Northern Ireland, the Department is of the view that the proposed legislation on litter does not have a significant negative impact on equality of opportunity on any of the groups specified in section 75 of the Northern Ireland Act 1998.

As a result of the screening analysis, we consider that there will be no significant implications for equality of opportunity as a result of the policy and legislative proposals outlined in this consultation document. A full Equality Impact Assessment is therefore not considered necessary.

ANNEX F

RURAL PROOFING

Rural proofing is a process to ensure that all relevant Government policies are carefully and objectively examined to determine whether or not they have a different impact in rural areas from that elsewhere, because of the particular circumstances of rural areas, and where necessary, what policy adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural community.

This paper contains the Department's proposals to improve the environmental quality of our public spaces and local neighbourhoods by the introduction of a new litter regime. The proposals are intended to help district councils across all of Northern Ireland to deal more effectively with environmental problems relating to litter, many of which affect the general appearance and cleanliness of their respective districts and the quality of life for those who live and work there. Generally the proposals are more likely to be used where the need is greatest in deprived and built up areas, however, councils will also be able to apply any new powers in rural areas as and when required. The Clean Neighbourhoods agenda does not, therefore, have a different impact in rural areas and does not affect accessibility to public services in rural areas.

ANNEX G

LIST OF CONSULTEES

ANVIL Ireland	Include Youth
arc21	Judicial Studies Board
Attorney General	Law Centre NI
Belfast Community Safety Partnership	Law Society of NI
Belfast Solicitors Association	Living Streets
Blue Cross	Local Government Staff Commission
British Library	Local Government Technical Advisors Group (TAG)
Bryson Charitable Group	MLAs
Canine Partners for Independence	Mourne Heritage Trust
Catholic Bishops of NI	National Library of Ireland
Chartered Institute of Environmental Health NI	National Trust
Chartered Institute of Wastes Management NI	NIC/ICTU
Children in Northern Ireland	NIPSA
Children's Law Centre	North South Ministerial Council
Civil Law Reform Division	North West Region Waste Management Group
Community Places	NI Amenity Council
Community Relations Council	NI Association of Citizens Advice Bureaux
Confederation of British Industry NI	NI Chamber of Commerce and Industry
Conservation Volunteers	NI Chief Environmental Health Officers' Group (CEHOG)
Countryside Alliance	NI Council for Voluntary Action
Disability Action	NI Court Service
District Councils	NI Environment Link
District Judge – Magistrates' Court	NI Judicial Appointments Commission
Education and Library Boards	NI Law Commission
Environment Committee of the NI Assembly	NI Local Government Association (NILGA)
Environment and Planning Law Association of NI	NI MEPs
Environmental Health Groups	NI MPs
Environmental Law Foundation	NI Ombudsman
Environmental Protection UK	NI Political Parties
Equality Commission for NI	NI Tourist Board
Equality Forum NI	Participation and the Practice of Rights Project
Executive Council of the Inn of Court of NI	PlayBoard
Federation of Small Businesses NI	Queens University Belfast, School of Law
Fermanagh Trust	Royal National Institute for Deaf People
Fields in Trust	Royal National Institute of Blind People
Friends of the Earth	Society of Local Authority Chief Executives (SOLACE)
Groundwork NI	SWaMP2oo8
HM Council of County Court Judges	

Human Rights Commission	Sustainable NI Tidy Northern Ireland Ulster Wildlife Trust University of Ulster, School of Law Woodland Trust NI
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