

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