

# **Litter Guidance**

## **Consultation Summary**

**November 2011**

## **Background**

1. The Department issued the Guidance on Litter consultation document on 13 June 2011. The consultation document contained details of draft guidance on litter to be issued to district councils; a draft Code of Practice on Litter; draft Guidance on Preventing Cigarette Litter; and a draft Regulatory Impact Assessment on Extension of Street Litter Control Notices, and an accompanying draft Regulation.
2. The new guidance reflects the provisions contained in Part 3 of the Clean Neighbourhoods and Environment Act (NI) 2011 which amends the Litter (Northern Ireland) Order 1994 to enable district councils to deal more effectively with litter, by introducing stronger laws with bigger on-the-spot fines.

## **Responses**

3. There were 19 responses to the consultation and of those who submitted comments, 74% were district councils/local government and 26% were interest groups.
4. In general the guidance was welcomed. It has been acknowledged by consultees that the introduction of this guidance will give all councils a reference document on which to develop their strategic and operational guidance and will seek to ensure that each council is working to develop consistent approaches in line with Departmental guidance.

## **Departmental Response**

5. Details of other comments raised and the Department's response to those comments are set out below.

Issue	Raised By	Departmental Response
<b>1. Do you have any comments on the draft Code of Practice on Litter?</b>		
Welcomed and supported	Dungannon & Tyrone BC	Noted
Welcomed the clarification of 'Litter'	NILGA Belfast CC Ballymena BC Omagh DC Armagh DC Newtownabbey BC	Noted
Title at 4.1 should read "These duties affect..."	TidyNI	Accepted and incorporated into revised guidance
The Code of Practice should place more emphasis on the responsibilities of those landowners who are not statutory undertakers to ensure that they keep their lands maintained	Belfast CC Ballymena BC SWaMP2008 Omagh DC Armagh DC Newtownabbey BC	Article 9 of the Litter Order requires the Department to prepare and issue a statutory Code of Practice for the purposes of providing practical guidance on the discharge of the duties imposed by Article 7(1) and (2). While the Code does not apply to landowners and occupiers that are not subject to the duty imposed by Article 7(1) and (2), paragraph 1.4 of the introduction to the Code states that it can and should also act as a guide to other managers of land that are not subject to the Article 7

		<p>duty, such as registered social landlords and arms-length management organisations in the management of the land for which they are responsible. The Code will be amended to clarify its status.</p>
<p>The Code of Practice – should be incumbent on event organisers to clear any land adversely affected by their litter associated with their event</p>	<p>NILGA Belfast CC Omagh DC Armagh DC</p>	<p>Article 9 of the Litter Order requires the Department to prepare and issue a statutory Code of Practice for the purposes of providing practical guidance on the discharge of the duties imposed by Article 7(1) and (2). While the Code does not apply to landowners and occupiers that are not subject to the duty imposed by Article 7(1) and (2), paragraph 1.4 of the introduction to the Code states that it 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. Paragraph 1.4 will be amended to include a reference to event organisers. The Code will be amended to clarify its status.</p>

<p>In order to ensure that there is no ambiguity regarding Councils responsibility over decaying leaves, plants etc. clarity of whether 'detritus' falls within the definition of litter</p>	<p>Coleraine BC Ards BC</p>	<p>The Department is of the opinion that the definition of litter in Article 2(2) of the Litter (NI) Order 1994 is sufficiently broad as to include detritus.</p>
<p>Further clarification of 'waste' required – one sack of rubbish usually be considered as fly-tipping, how would this influence the grading of a street?</p>	<p>NILGA Coleraine BC Belfast CC Omagh DC Armagh DC TidyNI</p>	<p>The presence of one sack of rubbish, usually considered as fly-tipping would not currently influence the grading of a street. See also comment below.</p>
<p>Need clarification on what is littering and what is fly-tipping?</p>	<p>Coleraine BC</p>	<p>There are ongoing discussions between the Department and councils aimed at reaching a protocol which will clarify responsibilities for littering and fly-tipping.</p>
<p>Grades of Cleanliness – requests the Department consider the NI195 system and consider intermediate grading system</p> <p>Clarification of how the grading system will work – i.e. within a defined area, radius or transect</p> <p>The re-classification of different types of land into high, medium and low intensity poses a particular issues for busy urban centres – this element of the COP should be reviewed to ensure reasonably practicable</p>	<p>NILGA Belfast CC Omagh DC Armagh DC TidyNI Lisburn CC</p>	<p>Accepted. The Department will revise and clarify the grading system in the guidance on litter.</p>

cleansing regimes are devised without incurring additional expenditure		
Pictorial examples are too small and unclear	NILGA Belfast CC Omagh DC Armagh DC	Accepted, better quality pictorial examples will be inserted into the revised guidance.
The last sentence of Section 9.6 of the COP should be amended to read “duty bodies respond within 3 hours of a report to the “Duty Body”	NILGA Belfast CC Omagh DC Armagh DC	Accepted. Paragraph 9.6 of the Code of Practice will be amended accordingly
Does the duty to keep land clear of litter extend to removal of litter from waterways? – this is not clear in the guidance	NILGA Belfast CC Omagh DC Armagh DC Newtownabbey BC	Yes. By virtue of the Interpretation Act (NI) 1954 land includes land covered by water. Article 7(3) of the Litter (NI) Order 1994 determines the standard which is required as well as the measures which are practicable in the circumstances.
Code of Practice should be amended to state that Fixed Penalty Notices will never be used on children and young people	Children’s Law Centre	The issue of Fixed Penalty Notices in respect of juveniles is dealt with in detail in a separate Code of Practice issued by the Department. That Code makes it clear that a fixed penalty notice should only be issued in exceptional circumstances and as a last resort.

<p>Roadside verge cutting by DRD operate a cut and leave policy – unfair on councils to deal with this problem</p>	<p>Lisburn CC Ards BC</p>	<p>Noted. However, this is a matter that councils should raise with DRD with a view to establishing an agreed position with regard to cutting roadside verges</p>
<p>Clarification on who is responsible for clearing litter from land which is unregistered and no legal owner can be found</p>	<p>SWaMP2008</p>	<p>Article 7(1) of the Litter Order places a duty on each district council, as respects its relevant land or any other relevant road for which it is responsible to ensure that the land or road is, so far as is practicable, kept clear of litter. Relevant land of a district council is defined as land which is open to the air and is land under the direct control of a council to which the public are entitled or permitted to have access with or without payment. Councils are, therefore, responsible, so far as is practicable, for ensuring that land, which is unregistered and for which no legal owner can be found, is kept clear of litter.</p>
<p><b>2. Do you have any comments on the draft Guidance on Litter document?</b></p>		
<p>Welcomed litter guidance</p>	<p>NILGA Omagh DC Armagh DC Newtownabbey BC</p>	<p>Noted.</p>

	Ards BC	
Welcomed the clarification regarding discarding of litter into waterways	NILGA Belfast CC Omagh DC Armagh DC Newtownabbey BC Ards BC	Noted.
Clarification of whether Forest Land is also included as “relevant land”	TidyNI	Relevant Crown land is defined in Article 2(2) as 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. Forest land is, therefore, included in the definition of relevant land for the purposes of the Article 7 duty to clear land of litter.
“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” – greater discussion within the guidance would assist in its interpretation	Coleraine BC Larne BC Ballymena BC Ards BC	Noted. The Department is of the view that the stated intention of this new provision is clear.
Littering on beaches – has not been fully explored by the guidance	Coleraine BC Larne BC Ballymena BC Newtownabbey BC TidyNI	Article 7(1) of the Litter Order places a duty on each district council, as respects its relevant land or any relevant road for which it is practicable, kept clear of litter. Relevant land of a district council is

		defined as land which is open to the air and is land under the direct control of a council to which the public are entitled or permitted to have access with or without payment. This includes beaches above the high tide water level and is expressly dealt with in the Code of Practice on Litter.
Welcomes the power to require occupiers and owners of land to clear their land of litter	NILGA Coleraine BC Belfast CC SWaMP2008 Omagh DC Armagh DC	Noted.
Noted that utility companies fall outside the definition of statutory undertaker – concerns especially with NIE property	Ards BC	Noted. However, land owned by utility companies such as NIE, which are not prescribed as statutory bodies, is subject to the new Litter Clearing Notice regime as it is treated in effect as privately owned land.
The Guidance should also state that Litter Clearing Notices should also be applicable where fly-tipped waste has the potential to result in defacement of an area by litter	NILGA Ballymena BC Lisburn CC Omagh DC Armagh DC	Noted. There are ongoing discussions between the Department and councils aimed at reaching a protocol which will clarify responsibilities for littering and fly-

		tipping.
Litter Clearing Notices should also include a step to ensure that arrangements are in place for the maintenance and emptying of any bins that are provided	NILGA Belfast CC Omagh DC Armagh DC	This is already addressed in paragraph 5.11 of the Guidance on Litter which refers to the provision of litter bins and appropriate containment of waste as being steps that can be imposed by a Litter Clearing Notice.
Litter Clearing Notices can only be served if the relevant area is “defaced by litter so as to be detrimental to the amenity of the locality” – request removal of this additional test	Coleraine BC Larne BC Ballymena BC Lisburn CC Newtownabbey BC	This is new legislation and the Department would wish to monitor and evaluate its effectiveness after a suitable settling in period.
Paragraph 6.10 should also make reference to ensuring that any bins that are provided under the terms of a Street Litter Control Notice are emptied at suitable frequencies and maintained by businesses	NILGA Omagh DC Armagh DC	This is already addressed in the model Street Litter Control Notice form set out in Annex A to the Guidance on Litter (see paragraph of the model form).
Should a specific litter enforcement strategy be produced?	Coleraine BC Ballymena BC	The production of an enforcement strategy will be part of the Guidance on the use of Fixed Penalty Notices
Provision of a false name – in practice failure to give a name rarely materialises	Coleraine BC Larne BC	Noted.

	Ballymena BC SWaMP2008 Newtownabbey BC	
Revised definition of “authorised person” – welcomed	Coleraine BC Larne BC Ballymena BC SwaMP2008 Newtownabbey BC Ards BC	Noted.
Would have preferred a longer period for standard and early payment of FPNs	Ballymena BC	Noted. However, this would require a change to primary legislation and cannot be accommodated at this stage.
Not physically capable 5.5 – this position may be abused	Ballymena BC Lisburn CC	Noted. It will be councils to exercise their judgement on a case by case basis.
Litter clearance notice – the 28 day period to comply is too long	Ards BC	The 28 day period is prescribed in the 2011 Act and would require further primary legislation to effect a change. However, the Department is of the view that the 28 day period is reasonable given that a person on whom a Litter Clearing Notice is served, under Article 12B of the Litter Order has 21 days within which to appeal to a court of

		summary jurisdiction
<b>3. Do you have any comments on the restrictions on the hand out of free literature?</b>		
Welcomed	Larne BC Newtownabbey BC	Noted.
There appears to be no sanctions or redress for councils in the event of non-compliance with conditions. Sanctions should be put in place e.g. a refundable deposit to take account of these circumstances	NILGA Belfast CC Omagh DC Armagh DC	Noted. However under paragraph 3(7) of Schedule 1A to the Litter Order, consent may be revoked at any time by notice to the person to whom it was given. Should that person continue to distribute literature without consent that person will be guilty of an offence under paragraph 1 and may be liable to a Fixed Penalty Notice under paragraph 7 or face prosecution. Under paragraph 3(4) a council may withhold consent to any applicant if within 5 years ending on the date immediately prior to the application, the applicant has been convicted of an offence under paragraph 1 or has paid a fixed penalty under paragraph 7.

The guide would benefit from additional examples for refusal of consent	Coleraine BC Ballymena BC Newtownabbey BC	Noted.
Cannot designate non-council land – this would need to be reviewed to allow effectiveness	Ards BC	This is new legislation and the Department would wish to monitor and evaluate its effectiveness after a suitable settling in period.
Methods of giving the public notice of designation would appear to be impracticable, antiquated and indeed could detract from the visual amenity of the area in itself.	Ards BC	Noted. The Clean Neighbourhoods and Environment Act (NI) 2011 requires a notice to be posted on the land. The design and siting of such a notice is a matter for the council.
<b>4. Do you have any comments on the draft Preventing Cigarette Litter document?</b>		
Guidance is welcomed	Coleraine BC Larne BC Newtownabbey BC Japan Tobacco Group	Noted.
This document should place a greater emphasis on the role of local businesses in contributing to the efforts to reduce the level of cigarette litter	NILGA Belfast CC Lisburn CC Omagh DC Armagh DC	The guidance is aimed at district councils that have primary responsibility for dealing with litter. The guidance recognises however that local businesses have an important role to play in cigarette

		litter prevention, by providing ashtrays and cleaning up cigarette litter. By focussing on 'what's in it for them' and by providing accurate, consistent information and resources, district councils can engage local businesses as part of the solution to cigarette litter.
First paragraph of the document refers to "cigarette butts" and later referred to as "cigarette ends" same terminology throughout should be used	NILGA Belfast CC Omagh DC Armagh DC	Accepted. This guidance will be amended accordingly
Greater emphasis placed on the need for businesses to provide ashtrays on the perimeter of their premises	NILGA Belfast CC Omagh DC Armagh DC	The guidance is aimed at district councils that have primary responsibility for dealing with litter. The guidance recognises however that local businesses have an important role to play in cigarette litter prevention, by providing ashtrays and cleaning up cigarette litter. By focussing on 'what's in it for them' and by providing accurate, consistent information and resources, district councils can engage local businesses as part of the solution to cigarette litter.
<b>5. Do you have any other comments on the draft Regulatory Impact Assessment or the draft Regulations/other comments</b>		

Acknowledged – no comment	Ombudsman NI NI Judicial Appointments Commission NI Tourist Board	Noted.
Resourcing – places a new burden on councils and should be adequately funded	NILGA Ballymena BC Lisburn CC Omagh DC Armagh DC Ards BC	This comment relates to the consultees views on the overall impact of the whole Act, rather than on the Litter provisions in Part 3 of the Act that are the subject of this consultation. The Department is of the view that the new litter provisions simplify and streamline and strengthen existing litter law and should lead to savings in councils' costs in dealing with litter.
Will the Department fund a province wide publicity campaign and/or fund councils to have localised campaigns?	Coleraine BC Ballymena BC	At present the Department does not have the intention of funding an advertising campaign.
Requested that the Department fund training for all 26 councils	Coleraine BC Lisburn CC	The Department is already committed to providing extensive and detailed guidance for district councils on all aspects of the new litter provisions in the Litter (NI) Order 1994. The Department has no plans to fund training for all 26 councils.
Extremely disappointed to note that there is no reference to human rights	Children's Law	The sole purpose of the Clean

in the consultation document	Centre	<p>Neighbourhoods and Environment Act (NI) 2011, and in particular Part 3 which strengthens councils powers to tackle litter, is to improve the quality of our local environments and neighbourhoods and thereby improve the quality of life for all of the people in Northern Ireland, including our children and our future generations. The people who should be most affected by the measures are those who offend and damage the local environment. The Department accepts that a different approach in terms of fixed penalty notices is required in respect of children and detailed guidance on this issue, which is the subject of a separate consultation exercise on Guidance on Fixed Penalty Notices, will form part of the overall clean neighbourhoods agenda.</p> <p>Given the overall aim of the Act to improve the quality of life for all of</p>
The Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 runs the risk of further alienating and criminalising children and young people		
Failure to consider the best interests of children as the primary consideration		
Requests a full Equality Impact Assessment be carried out for the CNEA – believe the Department has made an error in screening out		
The Equality Impact screening fails to recognise the potentially adverse impact on young people especially with regard to Fixed Penalty Notices		
Request details and information on direct consultation with children or young people		
Would like to see details of the system used to analyse responses to this consultation process, both on the system of analysis itself, and on its operation which lead to the decision to screen out the EQIA being taken		
‘Read across’ of legislation from the rest of the UK is not an appropriate legislative discipline		
Fixed Penalty Notices – for an authorised officer to believe an offence has been committed does he actually have to see it being committed?		

Fixed Penalty Notices – could lead to demonization of children		the people of Northern Ireland the Department does not accept that it has a significant negative impact on equality of opportunity on any of the groups specified in section 75 of the Northern Ireland Act 1998.
Welcomes that FPNs can now be issued for non-compliance	Larne BC	Noted
Welcomed the extension of the list of premises to which Street Litter Control Notices can be issued	Dungannon & South Tyrone BC	Noted
Welcomed – abandoned shopping trolleys/luggage trolleys	SWaMP2008	Noted
Disappointed that commercial office blocks have not been included in the extended list	NILGA Belfast CC Omagh DC Armagh DC	The extension of Street Litter Control Notices to commercial office blocks is the subject of draft primary legislation currently being considered at Westminster. The Department will closely monitor developments regarding this proposal.
Street Litter Control Notices – to include moveable structures – welcomed	Coleraine BC SWaMP2008	Noted
Immediate offence to not comply with requirements of a Street Litter Control Notice – welcomed	Coleraine BC Ballymena BC	Noted
Fines should be punitive and should have realistic costs attached	Cllr.T.Ekin	This comment relates to fines and costs that are imposed by the courts and is outside of the Department's jurisdiction.

<p>Fly-posting – the beneficiary should be fined not the person who puts the poster up</p>	<p>Cllr.T.Ekin</p>	<p>The Act strengthens the law in relation to fly-posting by –</p> <ul style="list-style-type: none"><li>- Providing district councils with the power to issue fixed penalty notices</li><li>- Enabling councils to serve notices on owners of street furniture requiring them to remove fly-posters from their property.</li><li>- Amending existing powers available to district councils to remove fly-posters.</li><li>- Closing existing loopholes which allow the beneficiaries of fly-posting to avoid liability and to continue to benefit from free illegal advertising.</li><li>- Amending the defence currently available to the beneficiaries of fly-posting to make it more difficult for them to escape prosecution.</li><li>- Providing councils with additional powers to gather information in relation to fly-posting offences.</li></ul>
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Councils should identify suitable fly-posting sites	Cllr.T.Ekin	This is entirely a matter for councils. Subject to the required planning consents, there is currently no bar on councils seeking to identify suitable fly-posting sites.
Costs of all the consultations – how much of the consultation has produced anything of value?	Cllr.T.Ekin	For the most part, the Department is required by statute to consult prior to the issue of guidance and subordinate legislation. As can be seen from the above, the Department takes seriously the consultation responses and where accepted these have been incorporated into revised guidance.

**Respondees: 19**

Ards Borough Council  
Armagh City and District Council  
Ballymena Borough Council  
Belfast City Council  
Children's Law Centre  
Cllr. Tom Ekin  
Coleraine Borough Council  
Dungannon & South Tyrone Borough Council  
Japan Tobacco Group  
Larne Borough Council  
Lisburn City Council  
Newtownabbey Borough Council  
NIJAC  
NILGA  
North Down Borough Council  
Northern Ireland Tourist Board  
Omagh District Council  
SwAMP2008  
Tidy NI