

1994 No. 1896 (N.I.10)

## The Litter (Northern Ireland) Order 1994

19<sup>TH</sup> July 1994

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## SCHEDULE 1

### ABANDONED SHOPPING AND LUGGAGE TROLLEYS

#### Title and commencement

1. – (1) This Order may be cited as the Litter (Northern Ireland) Order 1994.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>1</sup>

#### Annotations: Interpretation

2.–(1) The Interpretation Act (Northern Ireland) 1954<sup>2</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order-

“the appropriate authority”, in relation to any Crown land, means-

(a) in the case of land occupied as part of the Crown Estate Commissioners;

(b) in the case of land occupied by or for the purposes of a government department, that government department;

(c) in the case of land occupied or managed by a body on behalf of the Crown, that body;

~~“authorised officer” means an officer of a district council authorised in writing by the council for the purposes of this Order;~~

**Comment [JC1]**- Repealed by Schedule 4 of the CNEA 2011

“Crown land” means 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;

“the Department” means the Department of the Environment;

“educational institution” means –

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<sup>1</sup> fully exercised by S.R. 1994/337

<sup>2</sup> 1954 c.33(NI)

(a) any higher educational institution as defined in Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993<sup>3</sup>,

(b) any college of education as defined in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986<sup>4</sup>;

(c) any institution which provides further education as defined in Article 3 of the Further Education (Northern Ireland) Order 1997<sup>5</sup>;

(d) any school as defined in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986;

“footway” has the same meaning as in Article 2(2) of the Roads (Northern Ireland) Order 1993<sup>6</sup>;

“government department” includes a department of the government of the United Kingdom;

“litter”, subject to Article 7(4), means-

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

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

but not, subject to paragraph (7), animal droppings;

“regulations” means regulations made by the Department;

“relevant Crown land” means, subject to paragraph (3), 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;

“relevant land of a district council” means, subject to paragraph (3), 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;

“relevant land of a designated educational institution” means, subject to paragraph (3), land which is open to the air and is land under the direct control of the governing body of any educational institution or educational institution of any description by the Department, by order;

~~“relevant land within a litter control area of a district council” means land included in an area designated by a district council under Article 10 to which the public are entitled or permitted to have access with or without payment;~~

**Comment [JC2]**- Repealed by Schedule 4 of the CNEA 2011

“relevant land of a designated statutory undertaker” means, subject to paragraph (3), 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;

“road” has the same meaning as in Article 2(2) of the Roads (Northern Ireland) Order 1993 but includes a footway;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

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<sup>3</sup>1993 N.I. 12

<sup>4</sup>1986 N.I.3

<sup>5</sup>1997 N.I.15

<sup>6</sup>1993 N.I.15

“statutory undertaker” means-

- (a) any body or person authorised by any statutory provision to carry on any railway, road transport, water transport, inland navigation, dock or harbour undertaking;
- (b) the airport operator (within the meaning of the Airports (Northern Ireland) Order 1994<sup>7</sup>) of any airport to which Article 25 of that Order applies;
- (c) any other body or person prescribed by regulations;

“waste” has the same meaning as in Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978<sup>8</sup>.

(3) The Department may, by order, designate descriptions of land which are not to be treated as relevant Crown land or as relevant land of district councils, of designated statutory undertakers or designated educational institutions or of any description of such institutions.

(4) Subject to paragraph (5), every road is a “relevant road” and each district council is for the purposes of this Order, “responsible” for so much of any relevant road as lies within the district of the council.

(5) The Department may, by order, designate roads which are not to be treated as a relevant road.

(6) A place on land shall be treated as “open to the air” notwithstanding that it is covered if it is open to the air on at least one side.

(7) The Department may, by order, apply the provisions of this Order which apply to litter to any description of animal droppings in all or any circumstances as may be specified in the order subject to such modifications as appear to the Department to be necessary.

### Penalty for leaving litter, etc

#### Offence of leaving litter

3. – (1) If any person throws down, drops or otherwise deposits in, into or from any place open to the air, and leaves, any thing whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any such place, he shall, subject to paragraph (2), be guilty of an offence.

(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove that the depositing and leaving of the thing was-

- (a) authorised by law, or
- (b) done with the consent of the owner or other person or authority having control of the place in or into which that thing was deposited.

(2A) A person may only give consent under paragraph (2) in relation to the depositing of litter in a lake, pond or watercourse if he is the owner, occupier or other person having control of-

- (a) all the land adjoining the lake, pond or watercourse; and
- (b) all the land through or into which water in that lake, pond or watercourse directly or indirectly discharges, otherwise than by means of a public sewer.

Comment [JC3]-Inserted by Article 14 CNEA

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<sup>7</sup> 1994 N.I. 1

<sup>8</sup> 1978 N.I.19

(2B) In paragraph (2A)-

“watercourse” has the same meaning as in Article 2(2) of the Drainage (Northern Ireland) Order 1973; and

“public sewer” has the same meaning as in Article 2(2) of the Water and Sewerage Services (Northern Ireland) Order 2006.”

**Comment [JC4]**- Inserted by Article 14 CNEA

(3) A person who is guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) A district council, with a view to promoting the abatement of litter, may take such steps as the council thinks appropriate for making the effect of paragraph (3) known to the public in its district.

#### **Offence of permitting dogs to foul**

~~4. (1) Subject to paragraph (4), if any person, being a person in charge of a dog, permits the dog to deposit its excrement in any place prescribed by regulations he shall, subject to paragraph (2), be guilty of an offence.~~

~~(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove that~~

~~(a) he took all reasonable precautions and exercised due diligence to avoid the commission of the offence; or~~

~~(b) he made a reasonable attempt to remove the excrement.~~

~~(3) A person who is guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.~~

~~(4) Paragraph (1) shall not apply to a blind person in charge of a dog kept and used wholly or mainly for his guidance or to a stock person in charge of a working dog being used for driving livestock.~~

~~(5) In paragraph (4) “livestock” has the same meaning as in Article 2(2) of the Dogs (Northern Ireland) Order 1983<sup>9</sup>.~~

**Comment [JC5]**- Repealed by Schedule 4 of the CNEA 2011

#### **Enforcement of Articles 3 and 4**

5. – (1) Where an authorised person believes that an offence under Article 3 ~~or 4~~ has been committed, he may demand the name and address of any person whom he believes to be guilty of the offence.

**Comment [JC6]**- Article 4 repealed by Sch 4 CNEA

(2) An authorised person (other than a constable in uniform) demanding the name and address of any person under paragraph (1) shall, if so required, produce his credentials.

(3) A person commits an offence if-

(a) he fails to give his name and address in response to a demand under paragraph (1), or

(b) he gives a false or inaccurate name and address in response to a demand under that paragraph.

(3A) A person guilty of an offence under paragraph (3) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Comment [JC7]**- Inserted by Article 15 of CNEA

~~(3) If a person whose name and address has been demanded under paragraph (1) fails to comply with the demand, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.~~

**Comment [JC8]**— Repealed by Schedule 4 of the CNEA 2011

(4) Without prejudice to the right of any person to institute proceedings for an offence under Article 3 ~~or 4~~, a district council may institute proceedings for such an offence committed in its district.

**Comment [JC9]**— Article 4 repealed by Sch 4 CNEA

(5) In this Article –

“authorised officer” has the same meaning as in Article 6; |

**Comment [JC10]**— Inserted by Article 15 of CNEA

“authorised person”, in relation to an offence believed to have been committed in any place, means-

(a) an authorised officer of the district council within whose district the place is situated;

(b) an authorised officer of the district council by whom the place is controlled or managed;

(c) the owner or occupier of the place (being private land) or any servant or agent of his duly authorised by him in writing; or

(d) a constable;

“believes” means believes on reasonable grounds.

### Fixed penalty notices

6. – (1) Where on any occasion an authorised officer of a district council finds a person who he believes has on that occasion committed an offence under Article 3 ~~or, as the case may be, Article 4~~ in the district of that council, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

**Comment [JC11]**— Article 4 repealed by Sch 4 CNEA

(2) Where a person is given a notice under this Article in respect of an offence-

(a) no proceedings shall be instituted for that offence before the expiration of 14 days from the date of the notice; and

(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(3) A notice under this Article shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state-

(a) the period during which, under paragraph (2), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid;

and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(4) Where a letter is sent in accordance with paragraph (3) payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(5) Regulations may prescribe the form of notices under this Article.

(6) The fixed penalty payable in pursuance of a notice under this Article is payable to the district council whose authorised officer gave the notice.

(6A) The amount of a fixed penalty payable in pursuance of a notice under this Article-

(a) is the amount specified by a district council in relation to its district, or

(b) if no amount is so specified, is £75.

(7) A district council to which a fixed penalty is payable under this Article may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the council".

~~(6) The fixed penalty payable to a district council under a notice under this Article shall, subject to paragraph (7) be £50 and any sums received by a council in respect of fixed penalties shall be dealt with in accordance with Article 6A.~~

~~(7) The Department may, by order, substitute a different amount for the amount for the time being specified as the amount of the fixed penalty in paragraph (6).~~

**Comment [JC12]**-Inserted and amended by Article 15 of CNEA

(8) In any proceedings a certificate which-

(a) purports to be signed by or on behalf of the clerk of the council; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

shall be evidence of the facts stated.

(8A) The Department shall prepare and issue, and may from time to time revise, a code of practice for the purpose of providing guidance on the giving by authorised officers of notices under this Article.

(8B) An authorised officer must have regard to the code of practice as for the time being in force in determining whether to give a person a notice under this Article.

(8C) A draft of the code of practice, or any revision of the code of practice, shall be laid before the Assembly.

(8D) If, within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken in relation to the draft but without prejudice to the laying before the Assembly of a new draft.

**Comment [JC13]**-Inserted by Article 16 of CNEA

(9) In this Article-

"authorised officer", in relation to a district council, means-

(a) an employee of the district council who is authorised in writing by the council for the purpose of giving notices under this Article;

(b) any person who, in pursuance of arrangements made with the council has the function of giving such notices and is authorised in writing by the council to perform that function; and

(c) any employee of such a person who is authorised in writing by the council for the purpose of giving such notices;

**Comment [JC14]**-Inserted by Article 16 of CNEA

“clerk of the council”, in relation to a district council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972<sup>12</sup>,

“believes” has the same meaning as in Article 5.

### **Use of fixed penalty receipts**

~~6A. (1) A council may use its fixed penalty receipts only for the purposes of –~~

~~(a) its functions under Articles 5 and 6;~~

~~(b) such other functions (if any) as are specified in regulations made by the Department;~~

~~(2) A council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.~~

~~(3) The Department may by regulations –~~

~~(a) make provision for what a council is to do with its fixed penalty receipts –~~

~~(i) pending their being used for the purposes mentioned in paragraph (1);~~

~~(ii) if they are not so used before such time after their receipt as may be specified in the regulations;~~

~~(b) make provision for accounting arrangements in respect of a council's fixed penalty receipts.~~

~~(4) The provision that may be made under paragraph (3)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.~~

~~(5) Before making regulations under this Article the Department shall consult councils and –~~

~~(a) such associations or bodies representative of councils;~~

~~(b) such associations or bodies representative of officers of councils; and~~

~~(c) such other persons or bodies,~~

~~as the Department considers appropriate.~~

~~(6) In this Article references to a council's fixed penalty receipts are to the sums received by the council in respect of fixed penalties under Article 6.~~

**Comment [JC15]:** Amended and removed by Article 16 of CNEA

### **Clearing and cleaning land and roads**

7.<sup>14</sup> – (1) It shall be the duty of –

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

(b) the Department, as respects any road which is not a relevant road,

(c) the appropriate authority, as respects its relevant Crown land,

(d) each designated statutory undertaker, as respects its relevant land, and

(e) the governing body of each designated educational institution, as respects its relevant land,

~~(f) the occupier of any relevant land within a litter control area of a district council,~~

**Comment [JC16]**—Repealed by Schedule 4 of the CNEA 2011

to ensure that the land or road is, so far as is practicable, kept clear of litter.

(2) Subject to Article 8(2), it shall also be the duty of –

(a) each district council, as respects any relevant road for which it is responsible,

(b) the Department, as respects any road which is not a relevant road,

to ensure that the road is, so far as is practicable, kept clean.

(3) In determining what standard is required, as respects any description of land or road, for compliance with paragraphs (1) and (2), regard shall be had to the character and use of the land or road as well as the measures which are practicable in the circumstances.

(4) Regulations may prescribe matter of any description for the purposes of paragraph (1)(a) and (2)(a) which shall be litter to which the duties imposed by those paragraphs apply as respects roads whether or not it would be litter apart from this paragraph.

(5) A district council may, with the consent of the person who has the duty to keep any road or land clear under paragraph (1)(b) to (f), arrange for the cleaning of the road or, as the case may be, the land and may enter into an agreement with such a person for the payment by him of charges in respect of the clearing.

(6) Nothing in this Article operates to confer on any person a right of action in tort against the Department or any district council for failing to carry out any duty imposed on it under this Article as respects any road.

### **Roads: supplementary provisions**

**8.** – (1) A district council, when discharging its duty under Article 7(1)(a) or (2)(a) as respects any relevant road, shall place and maintain on the road such traffic signs and barriers as may be necessary for giving warning and preventing danger to traffic or for regulating it and afterwards shall remove them as soon as they cease to be necessary for those purposes; but this paragraph has effect subject to any directions given under paragraph (2).

(2) In discharging its duty under Article 7(1)(a) or (2)(a) to keep clear of litter or to clean any relevant road for which it is responsible, the district council shall comply with any directions given to it by the Department with respect to-

(a) the placing and maintenance of any traffic signs or barriers;

(b) the days or periods during which clearing or cleaning shall not be undertaken or undertaken to any extent specified in the direction;

and for the purpose of enabling it to discharge its duty under Article 7(1)(a) or (2)(a) as respects any relevant road the district council may apply to the Department for the Department to exercise its powers under Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 (temporary traffic regulation)<sup>16</sup>.

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<sup>12</sup> 1972 c.9(N.I.)

<sup>14</sup> functions transferred by SR 1999/481

<sup>16</sup> 1997 N.I.2

(3) Where in the case of any road the Department or, as the case may be, the district council considers that, in order to facilitate the clearing or cleaning of the road on a particular day ("the relevant day"), it is appropriate to prohibit the parking of vehicles on the road during certain hours of the relevant day, the Department or the council may give notice in accordance with the following provisions of this Article prohibiting such parking.

(4) Such a notice must specify the road, the relevant day and the hours in question; and a copy of the notice must-

(a) be served on the occupier of any premises adjoining the road; and

(b) be conspicuously displayed at places on the road.

(5) The effect of the giving of such a notice and of the service and display of copies of it as required by paragraph (4) shall be to suspend during the hours of the relevant day specified in the notice the operation of any provision made by or under the Road Traffic (Northern Ireland) Order 1997 which authorises, designates or regulates the use of a parking place on the road.

(6) Where the Department or the council gives such a notice it shall cover up traffic signs and parking meters on the road during the hours of the relevant day specified in the notice, but without prejudice to the effect of the notice.

(7) If, either before or during the hours on the relevant day which are specified in a notice given by the Department or the council as mentioned in paragraph (3), the Department or the council displays notices on the road stating that the prohibition on parking is not to come into force or is to cease to be in force, the effect of the notices under this paragraph shall be to prevent the prohibition coming into force or, as the case may be, to terminate it.

(8) Where any parking on the road is, under a notice given as mentioned in paragraph (3), prohibited during specified hours on the relevant day, no right of action shall accrue to any person by reason of the fact that all or some of the clearing or cleaning of the road which the Department or, as the case may be, the district council proposes to do or has during those hours is not clearing or cleaning which the Department or that council has or had power to do if the other of those persons has or had power to do it.

(9) Any reference, in this Article to a road includes any road on which the parking of vehicles is, apart from this Article, authorised by virtue of any statutory provision whether on payment or free of charge; and where the parking of vehicles on that road is prohibited under this Article a person shall not be entitled to recover any sum paid by him in respect of the parking of a vehicle there.

(10) In this Article "parking meter", "parking place" and "traffic sign" have the same meaning as in the Road Traffic Regulation (Northern Ireland) Order 1997.

### **Code of practice**

**9.-** (1) The Department shall prepare and 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).

(2) The Department may issue modifications of, or withdraw, a code issued under paragraph (1); but where a code is withdrawn, the Department shall prepare and issue a new code under that paragraph in substitution for it.

(3) Any person subject to any duty imposed by Article 7(1) or (2) shall have regard to the code of practice in force under paragraph (1) in discharging that duty.

(4) A draft of the code prepared under paragraph (1) shall be laid before the Assembly.

(5) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon without prejudice to the laying before the Assembly of a new draft.

## Litter control areas

### Litter control areas

~~10. — (1) The Department may, by order, specify descriptions of land which may be designed under paragraph (3) as, or as part of, a litter control area.~~

~~(2) The power to specify descriptions of land under paragraph (1) includes power to describe land by reference to the ownership or occupation of the land or the activities carried on on it.~~

~~(3) A district council may, in accordance with the following provisions of this Article, by order designate any land in its district as, or as part of, a litter control area.~~

~~(4) No order under paragraph (3) designating any land shall be made unless the council is of the opinion that, by reason of the presence of litter, the condition of the land is, and unless the council makes a designation order is likely to continue to be, such as to be detrimental to the amenities of the locality.~~

~~(5) The power to make a designation order under paragraph (3) shall be excluded from the functions to which section 18 of the Local Government Act (Northern Ireland) 1972<sup>17</sup> (functions capable of delegation to a committee) applies.~~

~~(6) A district council proposing to make a designation order in relation to any land shall —~~

~~(a) notify persons who appear to the council to be persons who will be affected by the proposed order;~~

~~(b) give them an opportunity to make representations about it within the period of 21 days from the service of the notice; and~~

~~(c) take any representations so made into account in making its decision.~~

~~(7) A designation order under paragraph (3) shall identify the land to which it applies and shall be in such form as regulations prescribe.~~

Comment [JC17]—Removed by Art. 17 of the CNEA

## Summary proceedings to deal with litter

### Summary proceedings by persons aggrieved by litter

11. — (1) A court of summary jurisdiction may act under this Article on a complaint made by any person on the ground that he is aggrieved by the defacement, by litter, of-

(a) a road;

(b) any relevant land of a district council;

(c) any relevant Crown land;

(d) any relevant land of a designated statutory undertaker; or

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<sup>17</sup> 1972 c.9 (NI)

(e) any relevant land of a designated educational institution.

~~(f) any relevant land within a litter control area of a district council.~~

Comment [JC18]—Removed by Art. 17 of the CNEA

(2) A court of summary jurisdiction may also act under this Article on a complaint made by any person on the ground that he is aggrieved by the want of cleanliness of any road.

(3) A district council shall not be treated as a person aggrieved for the purposes of proceedings under this Article.

(4) Proceedings under this Article shall be brought against the person who has the duty to keep the road or land clear under Article 7(1) or to keep the road clean under Article 7(2), as the case may be.

(5) Before instituting proceedings under this Article against any person, the complainant shall give to the person not less than 5 days written notice of his intention to make the complaint and the notice shall specify the matter complained of.

(6) If the court is satisfied that the road or land in question is defaced by litter or, in the case of a road, is wanting in cleanliness, the court may, subject to paragraphs (7) and (8), make an order (“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.

(7) The court shall not make a litter abatement order if the defendant proves that he has complied, as respects the road or land in question, with his duty under Article 7(1) and (2).

(8) The court shall not make a litter abatement order where it appears that the matter complained of is the result of directions given to the district council under Article 8(2) by the Department.

(9) A person who, without reasonable excuse, fails to comply with a litter abatement order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(10) If in the case of a continuing offence under paragraph (9), the offender continues to fail to comply with the litter abatement order after the conviction, he shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not exceeding one-twentieth of level 4 on the standard scale for each day on which the offence is continued.

(11) In any proceedings for an offence under paragraph (9) or (10) it shall be a defence for the defendant to prove that he has complied, as respects the road or land in question, with his duty under Article 7(1) and (2).

(12) A code of practice under Article 9(1) shall be admissible in evidence in any proceedings under this Article and if any provision of such a code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(13) Where a court of summary jurisdiction is satisfied on the hearing of a complaint under this Article-

(a) that, when the complaint was made to it, the road or land in question was defaced by litter or, as the case may be, was wanting in cleanliness, and

(b) that there were reasonable grounds for bringing the complaint,

the court shall order the defendant to pay such reasonable sum to the complainant as the court may determine in respect of the expenses incurred by the complainant in bringing the complaint and the proceedings before the court.

### **Summary proceedings by district councils**

12. – (1) Where a district council is satisfied as respects-

- (a) any relevant Crown land,
- (b) any relevant land of a designated statutory undertaker, or
- (c) any relevant land of a designated educational institution.

~~(d) any relevant land within a litter control area of a district council,~~

**Comment [JC19]**– Removed by Art.17 of the CNEA

that it is defaced by litter or that defacement of it by litter is likely to recur, the council shall serve a notice (“a litter abatement notice”) imposing either the requirement or the prohibition or both the requirement and the prohibition specified in paragraph (2).

(2) The requirement and prohibition referred to in paragraph (1) are –

- (a) a requirement that the litter be cleared within a time specified in the notice;
- (b) a prohibition on permitting the land to become defaced by litter.

(3) The litter abatement notice shall be served –

- (a) as respects relevant Crown land, on the appropriate authority;
- (b) as respects relevant land of a designated statutory undertaker, on the undertaker;
- (c) as respects relevant land of a designated educational institution, on the governing body of the institution.

~~(d) in any other case, on the occupier of the land or, if it is unoccupied, on the owner of the land.~~

**Comment [JC20]**– Removed by Art.17 of the CNEA

(4) The person served with the notice may appeal against the notice to a court of summary jurisdiction within the period of 21 days from the date on which the notice was served.

(5) If, on any appeal under paragraph (4), the appellant proves that, as respects the land in question, he has complied with his duty under Article 7(1), the court shall allow the appeal.

(6) If a person on whom a litter abatement notice is served, without reasonable excuse, fails to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) If in the case of a continuing offence under paragraph (6), the offender continues to fail to comply with or contravenes the requirement or prohibition imposed by the notice, he shall be guilty of a further offence and shall be liable on summary conviction to an additional fine not exceeding one-twentieth of level 4 on the standard scale for each day on which the offence is continued.

(8) In any proceedings for an offence under paragraph (6) or (7) it shall be a defence for the person charged to prove that he has complied, as respects the land in question, with his duty under Article 7(1).

(9) A code of practice under Article 9(1) shall be admissible in evidence in any proceedings under this Article and if any provision of such a code appears to the court to be relevant to any question in the proceedings it shall be taken into account in determining that question.

(10) If a person on whom a litter abatement notice is served fails to comply with the requirement imposed by the notice in respect of any land, the district council may, subject to paragraph (11) –

(a) enter on the land and clear the litter; and

(b) recover from that person the expenditure attributable to the council having done so, except such of the expenditure as that person shows was unnecessary in the circumstances.

(11) Paragraph (10) does not apply in relation to relevant Crown land or relevant land of statutory undertakers.

### **Litter clearing notices**

**12A.** – (1) A district council may in accordance with this Article serve a notice (a “litter clearing notice”) in relation to any land in its district which is open to the air.

(2) Before serving a litter clearing notice in relation to any land a district council must be satisfied that the land is defaced by litter so as to be detrimental to the amenity of the locality.

(3) A litter clearing notice is to require the person on whom it is served –

(a) to clear the land of the litter; and

(b) if the district council is satisfied that the land is likely to become defaced by litter again, to take reasonable steps to prevent it from becoming so defaced.

(4) A litter clearing notice shall be served on –

(a) the occupier of the land to which it relates; or

(b) if the land is not occupied, the owner.

(5) A litter clearing notice imposing a requirement under paragraph (3)(a) may specify –

(a) a period within which the requirement must be complied with;

(b) standards of compliance.

(6) A period specified under paragraph (5)(a) shall not be less than 28 days beginning with the day on which the notice is served.

(7) A district council shall, in discharging its functions under this Article, have regard to any guidance given to it by the Department.

(8) The form and content of a litter clearing notice shall be such as the Department may by order specify.

(9) Where a district council proposes to serve a litter clearing notice in respect of any land but is unable after reasonable enquiry to ascertain the name or proper address of the occupier of the land (or, if the land is unoccupied, the owner) –

(a) the council may post the notice on the land (and may enter any land to the extent reasonably necessary for that purpose), and

(b) the notice shall be treated as having been served upon the occupier (or, if the land is unoccupied, the owner) at the time the notice is posted.

(10) A litter clearing notice shall not be served in relation to land of any of the following descriptions –

- (a) a road;
- (b) land under the direct control of a district council;
- (c) Crown land;
- (d) relevant land of a designated statutory undertaker;
- (e) relevant land of a designated educational institution.

### **Appeals against litter clearing notices**

**12B.** – (1) A person on whom a litter clearing notice is served under Article 12A may appeal against it to a court of summary jurisdiction in accordance with the provisions of this Article.

(2) An appeal under this Article shall be made within a period of 21 days beginning on the day on which the notice is served.

(3) The grounds on which an appeal under this Article may be made are that –

- (a) there is a material defect or error in, or in connection with, the notice;
- (b) the notice should have been served on another person;
- (c) the land is not defaced by litter so as to be detrimental to the amenity of the locality;
- (d) the action required is unfair or unduly onerous.

(4) A notice against which an appeal under this Article is made is of no effect pending the final determination or withdrawal of the appeal.

(5) On the determination of an appeal under this Article, a court of summary jurisdiction must-

- (a) quash the notice;
- (b) modify the notice (including modifying it by extending the period specified in it); or
- (c) dismiss the appeal.

### **Failure to comply with litter clearing notice**

**12C.** – (1) This Article applies where the person on whom a litter clearing notice is served under Article 12A fails without reasonable excuse to comply with any requirement imposed by the notice.

(2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) The district council which served the notice or any person authorised by it may enter the land to which the notice relates and clear it of litter.

(4) Where a district council exercises the power in paragraph (3), it may require the person on whom the notice was served to pay a reasonable charge in respect of the exercise of the power.

(5) A district council may for the purposes of paragraph (4) impose charges by reference to land of particular descriptions or categories (including categories determined by reference to surface area)".

Comment [JC21]-Inserted  
by Art.17 of CNEA

## Street Litter

### Street litter control notices

13. – (1) A district council may, with a view to the prevention of accumulations of litter in and around any street or open land adjacent to any street, issue notices (“street litter control notices”) imposing requirements on occupiers of premises in relation to litter, in accordance with this Article and Article 14.

(2) If the council is satisfied, in respect of any premises which are of a description prescribed under Article 14(1)(a) and have a frontage on a street in its district, that-

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

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

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

the council may serve a street litter control notice on the occupier or, if the premises are unoccupied, on the owner of the premises.

(3) A notice shall, subject to Article 14(2), (3) and (4)-

(a) identify the premises and state the grounds under paragraph (2) on which it is issued;

(b) specify an area of open land which adjoins or is in the vicinity of the frontage of the premises on the street;

(c) specify, in relation to that area or any part of it, such reasonable requirements as the council considers appropriate in the circumstances;

and, for the purposes of sub-paragraph (b), an area which includes land on both sides of the frontage of the premises shall be treated as an area adjoining that frontage.

(3A) A vehicle or stall or other moveable structure which is used for one or more commercial or retail activities while parked or set at a particular place on or verging a street shall be treated for the purposes of this Article and Article 14 as if it were premises situated at that place having a frontage on that street in the place where it is parked or set.

(3B) In paragraph (3A), “vehicle” means any vehicle intended or adapted for use on roads.

Comment [JC22]-Inserted by Art.18 of the CNEA

(4) In this Article and Article 14-

“notice” means a street litter control notice;

“open land” means land in the open air;

“the premises”, in relation to a notice, means the premises in respect of which the notice is issued;

“specified area” means the area specified in a notice under paragraph (3)(b); and

“street” means a road over which there is a right of way on foot.

### Street litter: supplementary provisions

14. –(1) The Department may, by order, specify –

(a) the descriptions of commercial or retail premises in respect of which a street litter control notice may be issued;

(b) the descriptions of land which may be included in a specified area; and

(c) the maximum area of land which may be included in a specified area.

(2) The power to describe premises or land under paragraph (1)(a) or (b) includes power to describe the premises or land by reference to occupation or to the activities carried on there.

(3) The land comprised in a specified area –

(a) shall include only land of one or more of the descriptions specified under paragraph (1)(b);

(b) shall not include any land which is not –

(i) part of the premises,

(ii) part of a street,

(iii) relevant land of a district council, or

(iv) land under the direct control of any other district council; and

(c) shall not exceed any applicable maximum area specified under paragraph (1)(c);

but a specified area shall not include any part of the premises which is or is part of a litter control area.

(4) The requirements which may be imposed by a notice shall relate to the clearing of litter from the specified area and may in particular require –

(a) the provision or emptying of receptacles for litter;

(b) the doing within a period specified in the notice of any such thing as may be so specified (including the standards to which any such thing must be done); or

(c) the doing (while the notice remains in force) at such times or intervals, or within such periods, of any such thing as may be so specified;

but a notice may not require the clearing of litter from any carriageway, except at a time when the carriageway is closed to all vehicular traffic.

(5) In relation to so much of the specified area as is not part of the premises the council shall take account, in determining what requirements to impose, of its own duties under this Order or otherwise, and of any similar duties of any other district council, in relation to that land.

(6) A district council proposing to serve a notice shall –

(a) inform in writing the person on whom the notice is to be served;

(b) give him the opportunity to make representations about the notice within the period of 21 days from the day on which he is so informed; and

(c) take any representations so made into account in making its decision.

Comment [JC23] - Inserted  
by Art.19 CNEA

(7) A person on whom a notice is served may appeal against the notice to a court of summary jurisdiction within the period of 21 days from the date on which the notice was served; and the court may quash the notice or may quash, vary or add to any requirement imposed by the notice.

~~(8) If it appears to the council that a person has failed or is failing to comply with any requirement imposed by a notice the council may apply to a court of summary jurisdiction for an order requiring the person to comply with the requirement within such time as may be specified in the order.~~

(8) A person commits an offence if, without reasonable excuse, he fails to comply with a requirement imposed on him by a notice.

Comment [JC24]-Inserted by Art.19 CNEA

~~(9) A person who, without reasonable excuse, fails to comply with an order under paragraph (8) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.~~

(9) A person guilty of an offence under paragraph (8) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Comment [JC25]-Inserted by Art.19 CNEA

(10) A district council –

(a) may provide and maintain in any street receptacles for litter;

(b) shall make arrangements for the regular emptying and cleaning of any receptacles provided by it under sub-paragraph (a); and

(c) may clean and empty receptacles for litter provided in any street by any other person.

(11) The regular emptying mentioned in paragraph (10)(b) shall be sufficiently frequent to ensure that no such receptacle or its contents shall become a nuisance or give reasonable grounds for complaint.

(12) A district council shall not provide, or serve a notice requiring the provision of, receptacles for litter except after consultation with the Department.

(13) In this Article “carriageway” has the same meaning as in Article 2(2) of the Roads (Northern Ireland) Order 1993<sup>18</sup>

#### **Fixed penalty notices relating to Articles 12C and 14**

14A – (1) This Article applies where on any occasion it appears to an authorised officer of a district council that a person has committed an offence under Article 12C(2) or 14(8) in relation to a notice served by that council.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the district council.

(3) Paragraphs (2) to (5) of Article 6 (fixed penalty notices), apply in relation to notices given under this Article as they apply in relation to notices given under that Article.

(4) The amount of a fixed penalty payable to a district council under this Article is-

(a) the amount specified by the council in relation to its district; or

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<sup>18</sup> 1993 N.I. 15

(b) if no amount is so specified, £100.

(5) the district council to which a fixed penalty is payable under this Article may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the council.

(6) In any proceedings a certificate which-

(a) purports to be signed by or on behalf of the clerk of the council; and

(b) states that payment of a fixed penalty was or was not received by the date specified in the certificate,

is evidence of the facts stated.

(7) In this Article-

“authorised officer”, in relation to a district council, means an officer of the council who is authorised in writing by the council for the purposes of giving notices under this Article;

“clerk of the council”, in relation to a district council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972.

**Comment [JC26]**-Inserted by Art.20 of CNEA

### Free distribution of printed matter

14B. Schedule 1A (free distribution of printed matter on designated land) has effect.

**Comment [JC27]**-Inserted by Art.21 of CNEA

## Miscellaneous

### Public registers

15. – (1) Each district council shall maintain in accordance with this Article, a register containing copies of –

(a) ~~all orders made by the council under Article 10(3); and~~

**Comment [JC28]**-Art.10 removed by Art.17 of CNEA

(b) all street litter control notices issued under Article 13(1); and

(c) all orders made by the district council under paragraph 2(1) of Schedule 1A.

**Comment [JC29]**-Inserted by Art.21 of CNEA

(2) Where the requirements of a street litter control notice are varied or added to on an appeal under Article 14(7) a copy of the order making the variation or addition shall be included in the register.

(3) Copies of the orders and notices required to be kept in the register shall be so kept for so long as the order or notice is in force.

(4) Each district council shall –

(a) secure that the register maintained under this Article is available, at all reasonable times, for inspection by the public free of charge; and

(b) afford to members of the public facilities for obtaining copies of the documents kept in the register, on payment of reasonable charges.

(5) A register under this Article need not be kept in documentary form.

### Abatement of litter

**16.** – (1) Each district council shall consult with such voluntary bodies as the council considers appropriate and as agree to participate in the consultations, about the steps which the council and the bodies are to take for the purpose of abating litter in the district; and the district council shall –

(a) prepare a statement of the steps which the council and bodies agree to take for that purpose; and

(b) take such steps as in its opinion will give adequate publicity in the district to the statement; and

(c) keep a copy of the statement available at its principal office for inspection by the public free of charge at all reasonable hours.

(2) The Department may with the consent of the Department of Finance and Personnel make grants to any body for the purpose of assisting the body to encourage the public not to deface places by litter.

#### **Application of Waste and Contaminated Land (Northern Ireland) Order 1997**

**17.** – (1) This Article applies to litter collected –

(a) by any district council or person under Article 7(1);

(b) by a district council under Article 12(10) or Article 12C(3); or

(c) by any person under Article 13.

Comment [JC30]—Inserted  
by Art.17 CNEA

(2) Regulations may provide that the provisions of Waste and Contaminated Land (Northern Ireland) Order 1997<sup>19</sup> shall have effect, with such modifications (if any) as may be prescribed in the regulations –

(a) as if reference to controlled waste or controlled waste of a prescribed description included references to litter to which this Article applies or any description of such litter;

(b) as if references to controlled waste or controlled waste of a prescribed description collected under Article 20 of that Order included references to litter collected as mentioned in paragraph (1) or any description of such litter.

(3) The powers conferred by this Article are exercisable in relation to litter to which it applies whether or not the circumstances are such that the litter would be treated as controlled waste apart from this Article and this Article is not to affect the interpretation of the expressions defined in Article 2 of that Order.

#### **Transitional provision relating to Article 7**

**18.** For the purposes of the transition to the duties imposed by Article 7 on the district councils, regulations may make provision –

(a) modifying that Article, or

(b) modifying Part II of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992<sup>20</sup> (competition rules for functional work or works contracts).

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<sup>19</sup> 1997 N.I. 19

<sup>20</sup> 1992 N.I. 6

### **Fixed penalty notices: supplementary**

**18A.** – (1) The Department may by regulations make provision in connection with the powers conferred under –

- (a) Article 6(6A)(a) and (7);
- (b) Article 14A(4)(a) and (5);
- (c) Paragraph 7(4)(a) and (5) of Schedule 1A.

(2) Regulations under paragraph (1) may (in particular)-

(a) require an amount specified under Article 6(6A)(a) or 14A(4)(a) or paragraph 7(4)(a) of Schedule 1A to fall within a range prescribed in the regulations;

(b) restrict the extent to which, and the circumstances in which, a district council may make provision under Article 6(7) or 14A(5) or paragraph 7(5) of Schedule 1A.

(3) The Department may by order substitute a different amount for the amount for the time being specified in Article 6(6A)(b) or 14A(4)(b) or paragraph 7(4)(b) of Schedule 1A.

### **Exclusion of liability**

**18B.** – (1) None of the persons mentioned in paragraph (2) shall have any liability to an occupier or owner of land for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of the power in Article 12(10), 12A(9) or 12C(3).

(2) Those persons are –

- (a) a district council and any employee of a district council; and
- (b) in the case of the power in Article 12C(3), any person authorised by the district council under that provision and the employer or any employee of that person.

(3) Paragraph (1) does not apply –

- (a) if the act or omission is shown to be in bad faith;
- (b) to liability arising out of a failure to exercise due care and attention;
- (c) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.

(4) This Article does not affect any other exemption from liability (whether at common law or otherwise).

Comment [JC31]-Inserted by Art.22 CNEA

### **Powers in relation to abandoned shopping and luggage trolleys**

**19.** – (1) A district council may, subject to paragraph (3), resolve that Schedule 1 is to apply in its district; and if a council does so resolve, that Schedule shall come into operation in its district on the day specified in the resolution, which must not be less than the period of 3 months from the day on which the resolution is passed.

(2) A district council shall publish in at least one newspaper circulating in its district a notice that the council has passed a resolution under this Article and indicating the general effect of that Schedule.

(3) A district council shall, before making any resolution for the application of Schedule 1 in its district, consult with the persons or representatives of persons who appear to the council to be persons who will be affected by the application of that Schedule.

(4) The district council shall consult about the operation of Schedule 1 with the persons or representatives of persons who appear to be affected by its operation.

#### **Power of district councils to obtain information**

**20.** – (1) Subject to paragraph (2), a district council may serve on any person a notice requiring him to furnish to the council, within a period or at times specified in the notice and in a form so specified, any information so specified which the council reasonably considers that it needs for the purposes of any function conferred on the council by this Order.

(2) Regulations may restrict the information which may be required under paragraph (1) and determine the form in which the information is to be so required.

(3) A person who –

(a) fails without reasonable excuse to comply with the requirements of a notice served on him under this Article; or

(b) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Power of entry**

**21.** The power conferred on a person authorised in writing by a district council by section 98 of the Local Government Act (Northern Ireland) 1972 to enter any land includes power to enter any land for the purpose of determining whether any provision of this Order or of any regulation made under this Order is being complied with.

#### **Local inquiries**

**22.** The Department may cause a local inquiry to be held in any case in which the Department considers it appropriate for such an inquiry to be held in connection with a provision of this Order.

#### **Miscellaneous provisions relating to legal proceedings**

**23.** – (1) Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of an offence under this paragraph whether or not proceedings for the offence are taken against any other person.

(2) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>21</sup>, proceedings for an offence under Article 3 may be brought at any time within 6 months from the date on which the litter deposited was last found to remain upon the place into or upon which it was deposited.

(3) Where on an appeal to a court of summary jurisdiction against a decision of a district council under this Order the court varies or reverses the decision the council shall act in accordance with the court's decision.

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<sup>21</sup> 1981 N.I. 26

## **Application to the Crown**

**24.** – (1) Subject to the provisions of this Article, the provisions of this Order and of regulations and orders made under it shall bind the Crown including the Crown in right of Her Majesty's Government in the United Kingdom.

(2) No contravention by the Crown of any provision of this Order or any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application of a district council, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provision of this Order and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to the premises, those powers shall not be exercisable in relation to those premises; and in this paragraph "Crown premises" means premises held or used by or on behalf of the Crown.

## **Regulations, orders and directions**

**25.** – (1) Regulations and orders made by the Department under this Order shall be subject to negative resolution.

(2) Any direction given under this Order shall be in writing and may be varied or revoked by subsequent directions.

*Article 26 – Repeals*

## **SCHEDULES**

### **Schedule 1**

Article 19

#### **ABANDONED SHOPPING AND LUGGAGE TROLLEYS**

##### **Application**

**1.** – (1) Subject to sub-paragraph (2), this Schedule applies where any shopping or luggage trolley is found by an authorised officer on any land in the open air and appears to him to be abandoned.

(2) This Schedule does not apply in relation to a shopping or luggage trolley found on the following descriptions of land, that is to say-

(a) land in which the owner of the trolley has an estate;

(b) where an off-street parking place affords facilities to the customers of shops for leaving there shopping trolleys used by them, land on which those facilities are afforded;

(c) where any other place designated by the district council for the purposes of this Schedule affords like facilities, land on which those facilities are afforded; and

(d) as respects luggage trolleys, land which is used for the purposes of its undertaking by a statutory undertaker.

## Power to seize and remove trolleys

**2.** – (1) Where this Schedule applies in relation to a shopping or luggage trolley, the district council may, subject to sub-paragraph (2), -

(a) seize the trolley; and

(b) remove it to such a place under its control as the council thinks fit.

(2) When a shopping or luggage trolley is found on any land appearing to the authorised officer to be occupied by any person, the trolley shall not be removed without the consent of that person unless –

(a) the council has served on that person a notice stating that the council proposes to remove the trolley; and

(b) no notice objecting to its removal is served by that person on the council within the period of 14 days from the day on which the council served the notice of the proposed removal on him.

## Retention, return and disposal of trolleys

**3.** – (1) Subject to the following sub-paragraphs, the district council, as respects any shopping or luggage trolley it has seized and removed –

(a) shall keep the trolley for a period of 6 weeks; and

(b) may sell or otherwise dispose of the trolley at any time after the end of that period.

(2) The council shall, as respects any trolley it has seized and removed, as soon as reasonably practicable (but not later than 14 days) from its removal, serve on the person (if any) who appears to the council to be the owner of the trolley a notice stating –

(a) that the council has removed the trolley and is keeping it;

(b) the place where it is being kept; and

(c) that, if it is not claimed, the council may dispose of it.

(3) Subject to sub-paragraph (4) if, within the period mentioned in sub-paragraph (1)(a), any person claims to be the owner of a shopping or luggage trolley being kept by the council under that sub-paragraph, the council shall, if it appears that the claimant is the owner, deliver the trolley to him.

(4) A person claiming to be the owner of a shopping or luggage trolley shall not be entitled to have the trolley delivered to him unless he pays the council, on demand, such charge as the council requires.

(5) No shopping or luggage trolley shall be disposed of by the council unless (where it has not been claimed) the council has made reasonable enquiries to ascertain who owns it.

**3A.** – (1) This paragraph applies where the district council is entitled to sell or otherwise dispose of a shopping or luggage trolley in accordance with paragraph 3(1)(b).

(2) If it appears to the council that a particular person is the owner of the trolley, the council may charge him a sum in respect of the removal, storage and disposal of the trolley.

(3) The charge is payable to the council on demand.

(4) The sum payable as a charge under this paragraph is recoverable by the council as a debt due to it.

(5) In proceedings against a person under sub-paragraph (4) for enforcement of a charge, it is a defence for the person to prove that he was not the owner of the trolley to which the charge relates at the time it was removed.

**Comment [JC32]**—Inserted by Art.24 of CNEA

## Charges

4. – (1) The district council, in fixing the charges to be paid under paragraph 3 by the claimant of a shopping or luggage trolley, shall secure that the charges so payable by claimants shall be such as are sufficient; in fixing the charges to be paid under this Schedule, shall secure that the charges so payable are such as are sufficient, taking one financial year with another, to cover the cost of removing, storing and disposing of such trolleys shopping or luggage trolleys under this Schedule.

**Comment [JC33]**—Amended by Art.24 of CNEA

**Comment [JC34]**—Amended by Art.24 of CNEA

(2) The council may agree with persons who own shopping or luggage trolleys and make them available for use in its district a scheme for the collection by them of trolleys they make available for use; and where such an agreement is in force with any person, no charge may be demanded under paragraph 3 or 3A by the council in respect of any trolley within the scheme in relation to which the provisions of the scheme are complied with.

**Comment [JC35]**—Inserted by Art.24 of CNEA

## Definitions

5. In this Schedule –

“authorised officer”, in relation to a district council, means an officer of a district council authorised in writing by the council for the purposes of exercising functions under this Schedule”.

**Comment [JC36]**—Inserted by Art.24 of CNEA

“luggage trolley” means a trolley provided by a person carrying on an undertaking mentioned in paragraph 1(2)(d) to travellers for use by them for carrying their luggage to, from or within the premises used for the purposes of that undertaking, not being a trolley which is power-assisted; and

“shopping trolley” means a trolley provided by the owner of a shop to customers for use by them for carrying goods purchased at the shop, not being a trolley which is power-assisted.

## SCHEDULE 1A

### FREE DISTRIBUTION OF PRINTED MATTER ON DESIGNATED LAND

#### Offence of unauthorised distribution

1. – (1) A person commits an offence if he distributes any free printed matter without the consent of a district council on any land which is designated by the council under this Schedule, where the person knows that the land is so designated.

(2) A person commits an offence if he causes another person to distribute any free printed matter without the consent of a district council on any land designated by the council under this Schedule.

(3) A person is not guilty of an offence under sub-paragraph (2) if he took reasonable steps to ensure that the distribution did not occur on any land designated under this Schedule.

(4) Nothing in this paragraph applies to the distribution of printed matter –

(a) by or on behalf of a charity within the meaning of the Charities Act (Northern Ireland) 2008, where the printed matter relates to or is intended for the benefit of the charity;

(b) where the distribution is for political purposes or for the purposes of a religion or belief.

(5) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) For the purposes of this Schedule –

(a) to “distribute” printed matter means to give it out to, or offer or make it available to, members of the public and includes placing it on or affixing it to vehicles, but does not include putting it inside a building or letter-box;

(b) printed matter is “free” if it is distributed without charge to the persons to whom it is distributed.

(7) For the purposes of this Schedule a person does not distribute matter if the distribution takes place inside a public service vehicle (within the meaning of the Road Traffic (Northern Ireland) Order 1981).

#### Designation

2. – (1) A district council may by order in accordance with this paragraph designate land in its district for the purposes of this Schedule.

(2) The land designated must consist of –

(a) relevant land of the district council;

(b) all or part of any relevant road for which the council is responsible; or

(c) both.

(3) A district council may only designate land where it is satisfied that the land is being defaced by the discharging of free printed matter which has been distributed there.

(4) Where a district council proposes to make an order under sub-paragraph (1) in respect of any land, it shall –

(a) publish a notice of its proposal in at least one newspaper circulating in an area of the district which includes the land; and

(b) post such a notice on the land.

(5) A notice under sub-paragraph (4) must specify –

(a) the land proposed to be designated;

(b) the date on which it is proposed that the order is to come into force (which shall not be earlier than the end of a period of 28 days beginning with the day on which the notice is given);

(c) the fact that objections may be made to the proposal, how they may be made and the period within which they may be made (being a period of at least 14 days beginning with the day on which the notice is given).

(6) Where after giving notice under sub-paragraph (4) and taking into account any objections duly made pursuant to sub-paragraph (5)(c) a district council decides to make an order under

sub-paragraph (1) in respect of any or all of the land in respect of which the notice was given, the council shall –

(a) publish a notice of its decision in at least one newspaper circulating in an area which includes the land; and

(b) post such a notice on the land.

(7) A notice under sub-paragraph (6) must specify the date on which the order is to come into force, being a date not earlier than –

(a) the end of the period of 14 days beginning with the day on which the notice is given; and

(b) the date referred to in sub-paragraph (5)(b).

(8) A district council may at any time revoke an order under sub-paragraph (1) in respect of any land to which the order relates.

(9) A district council must –

(a) Publish a notice of any revocation under sub-paragraph (8) in at least one newspaper circulating in an area which includes the land in question; and

(b) post such a notice on the land.

#### Consent and conditions

3. – (1) A district council may on the application of any person consent to that person or any other person (identified specifically or by description) distributing free printed matter on any land designated by the council under this Schedule.

(2) Consent under this paragraph may be given without limitation or may be limited –

(a) by reference to the material to be distributed;

(b) by reference to a particular period, or particular times or dates;

(c) by reference to any part of the designated land;

(d) to a particular distribution.

(3) A district council need not give consent under this paragraph to any applicant where it considers that the proposed distribution would in all the circumstances be likely to lead to the defacement of the designated land.

(4) Consent need not be given to any applicant if within the period of 5 years ending on the date of his application –

(a) he has been convicted of an offence under paragraph 1; or

(b) he has paid a fixed penalty under paragraph 7.

(5) Consent may be given under this paragraph subject to such conditions as the council considers necessary or desirable for –

(a) protecting the designated land from defacement; or

(b) the effective operation and enforcement of this Schedule.

(6) The conditions which may be imposed by a district council under this paragraph include conditions requiring any person distributing printed matter pursuant to consent given under this paragraph to produce on demand written evidence of the consent to an authorised officer of the council.

(7) Consent given by a district council under this paragraph may at any time be revoked (entirely or to any extent) by notice to the person to whom it was given, where –

(a) he has failed to comply with any condition subject to which it was given; or

(b) he is convicted of an offence under paragraph 1 or pays a fixed penalty under paragraph 7.

(8) Any condition imposed under this paragraph in relation to any consent may be varied or revoked by notice given to the person to whom the consent was given.

#### Fees

4. – (1) A district council may require the payment of a fee before giving consent under paragraph 3.

(2) The amount of a fee under this paragraph is to be such as the district council may determine, but shall not be more than, when taken together with all other fees charged by the council under this paragraph, is reasonable to cover the costs of operating and enforcing this Schedule.

#### Appeals

5. – (1) Any person aggrieved by a decision of a district council under paragraph 3 –

(a) to refuse consent,

(b) to impose any limitation or condition subject to which consent is given,

(c) to revoke consent (or to revoke it to any extent),

may appeal against the decision to a court of summary jurisdiction.

(2) A court may on an appeal under this paragraph –

(a) uphold any refusal of consent or require the council to grant consent (without limitation or condition or subject to any limitation or condition);

(b) require the council to revoke or vary any condition;

(c) uphold or quash revocation of consent (or uphold or quash revocation to any extent).

#### Seizure of material

6. – (1) Where it appears to an authorised officer of a district council that a person distributing any printed matter is committing an offence under paragraph 1, he may seize all or any of it.

(2) Any person claiming to own any printed matter seized under this paragraph may apply to a court of summary jurisdiction for an order that the printed matter be released to him.

(3) On an application under sub-paragraph (2), if the court of summary jurisdiction considers that the applicant does not own the printed matter, the court shall order the district council to release it to him, except to the extent that the court considers that the council needs to retain it for the purposes of proceedings relating to an offence under paragraph 1.

(4) Any printed matter seized under this paragraph (and not released under sub-paragraph (3)) shall be returned to the person from whom it is seized –

(a) at the conclusion of the proceedings for the offence (unless the court orders otherwise);

(b) at the end of the period in which proceedings for the offence may be instituted, if no such proceedings have been instituted in that period (or have been instituted but discontinued).

(5) Where it is not possible to return any printed matter under sub-paragraph (4) because the name and address of the person from whom it was seized are not known, a district council may dispose of it or destroy it.

#### Fixed penalty notices

7. – (1) This paragraph applies where on any occasion it appears to an authorised officer of a district council that a person has committed an offence under paragraph 1 on any land designated by the council under this Schedule.

(2) The authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the council.

(3) Paragraphs (2) to (5) of Article 6 apply in relation to notices given under this paragraph as they apply to notices under that Article.

(4) The amount of the fixed penalty payable to a district council under this paragraph –

(a) is the amount specified by the council in relation to its district; or

(b) if no amount is so specified, is £75.

(5) The district council to which a fixed penalty is payable under this paragraph may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the council.

(6) In any proceedings a certificate which –

(a) purports to be signed on behalf of the clerk of the council, and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(7) If an authorised officer of a district council proposes to give a person a notice under this paragraph, the officer may require the person to give him his name and address.

(8) A person commits an offence if –

(a) he fails to give his name and address when required to do so under sub-paragraph (7); or

(b) he gives a false or inaccurate name or address in response to a requirement under that sub-paragraph.

(9) A person guilty of an offence under sub-paragraph (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) In this paragraph “clerk of the council”, in relation to a district council, means the clerk appointed in accordance with section 41 of the Local Government Act (Northern Ireland) 1972.

Supplementary

8. In this Schedule "authorised officer", in relation to a district council, means –

(a) an employee of the district council who is authorised in writing by the council for the purposes of giving notices under paragraph 7;

(b) any person who, in pursuance of arrangements made with the council, has the function of giving such notices and is authorised in writing by the council to perform that function; and

(c) any employee of such a person who is authorised in writing by the council for the purpose of giving such notices.