

*These notes refer to the Clean Neighbourhoods and Environment Act
(Northern Ireland) 2011 (c.23) which received Royal Assent on 4 May 2011*

Clean Neighbourhoods and Environment Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Litter

Section 14 – Offence of dropping litter in lake, pond or watercourse

This section amends the offence of dropping litter in the Litter (Northern Ireland) Order 1994 (the Litter Order) in relation to a lake, pond or watercourse. Article 3 of the Litter Order describes what constitutes the offence of leaving litter and under what circumstances leaving litter is not an offence. Article 3(2) of the Litter Order provides that it shall be a defence for a person charged with an offence of leaving litter to prove that the disposal was authorised by law or done with the consent of the owner or other person or authority having control over the place in which the item of litter was deposited. This section inserts a new paragraph (2A) into Article 3 to provide that consent may only be given in relation to a lake, pond or watercourse if the same person owns all the surrounding land.

Section 15 – Penalty for failing to provide name

This section amends the Litter Order to also make it an offence to give a false or inaccurate name and address. This section also increases the maximum level of fine on summary conviction for these offences to level 3 (£1000).

Section 16 – Litter offence: fixed penalty notice

This section amends Article 6 of the Litter Order (fixed penalty notices). Subsection (2) amends Article 6 to enable a district council to specify the amount of fixed penalty to be applied in its district; where the council sets no such amount the fixed penalty shall be £75. Powers set out in Article 18A (introduced by section 22) of the Litter Order enable the Department to make regulations to set a minimum and maximum range within which the fixed penalty amount can be set. The district council to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

Subsection (3) provides that in determining whether to give a person a fixed penalty under Article 6 of the Litter Order an authorised officer must have regard to a code of practice issued by the Department as for the time being in force.

Subsection (4) inserts a definition of an “authorised officer” which allows district councils to authorise individuals other than their own employees to issue fixed penalty notices on their behalf.

Section 17 – Litter clearing notices

This section repeals the power to designate litter control areas (and Schedule 4 repeals provisions of the Litter Order which are consequential on that power). As an alternative, the section inserts a new Article 12A into the Litter Order empowering district councils to serve “litter clearing notices” on particular occupiers where they are of the view that defacement caused by the litter is detrimental to the amenity of the area. It also inserts new Articles 12B and 12C into the Litter Order. Article 12B provides a person who has been served a litter clearing notice with the right of appeal to a court of summary jurisdiction and sets out the grounds on which the appeal may be made. Article 12C makes it an offence to fail without reasonable excuse to comply with a litter clearing notice. Where a person fails to meet the requirement of a notice, a district council may itself enter the land to remove the litter. A council may impose a reasonable charge for this on the person who failed to comply with the notice.

Section 18 – Street litter control notices

This section extends the application of street litter control notices under Article 13 of the Litter Order to cover also vehicles, stalls and other moveable structures used for street vending, so that mobile vendors can also be required to take steps to minimise and clear up litter on any street or open land adjacent to it that originates from their commercial or retail activities.

Section 19 – Street litter: supplementary provisions

This section amends the Litter Order to make it an immediate offence not to comply with the requirements of a street litter control notice, thus dispensing with the requirement on the council first to seek an order from a court of summary jurisdiction ordering compliance. Article 14(4)(b) of the Litter Order relating to the requirements which may be imposed by a notice has been extended to include the standards to which any such thing must be done.

Section 20 – Failure to comply with notice: fixed penalty notices

This section inserts Article 14A into the Litter Order to enable an authorised officer of the district council to issue a notice to a person who he has reason to believe has not complied with a litter clearing notice or a street litter control notice, offering that person an opportunity to discharge any liability to conviction for an offence by payment of a fixed penalty. The use of receipts from these fixed penalty notices is dealt with under section 72.

Section 21 – Controls on free distribution of printed matter

This section inserts Article 14B and Schedule 1A into the Litter Order. This gives district councils the power to control the distribution of free literature to prevent such material from becoming litter in the local environment. The restrictions in this Article are subject to exceptions in the case of charity, religious and political material.

Paragraph 1 of Schedule 1A makes it an offence to distribute, commission or pay for the distribution of free literature without consent in a designated area. Material distributed for charitable, religious and political purposes is exempted from the offence. The offence does not extend to putting literature inside a building or letter-box, nor does it apply where the distribution takes place entirely within a public service vehicle, such as a bus or coach.

Paragraph 2 enables a council to make an order to designate areas where this offence will apply. It sets out the procedure and requirements for achieving designation, including public notification, consideration of objections and timing of designation.

Paragraph 3 enables a council to issue consents for the distribution of free literature in a designated area. This includes provisions allowing a council to impose conditions on the consent to prevent defacement and ensure enforcement, to refuse consent in certain circumstances, and to revoke consent. The consent may also specify that others can also distribute the material in accordance with that consent, for example, a distributor, an individual or the employees of the applicant.

Paragraph 4 enables a council to charge a fee, within the confines of overall cost recovery for this Schedule.

Paragraph 5 provides for appeal to a court of summary jurisdiction.

Paragraph 6 enables an authorised officer of a district council to seize the material when an offence is committed. A person claiming ownership of the literature may apply to a court of summary jurisdiction requesting the return of this material.

Paragraph 7 enables a council, or any person authorised by a council, to issue a fixed penalty notice for this offence, offering the offender an opportunity to discharge any liability to the offence.

Section 22 – Fixed penalty notices: supplementary

This section introduces a new Article 18A into the Litter Order, relating to the fixed penalty notices associated with the offence of dropping litter, litter clearing notices, street litter control notices and the distribution of printed matter. It enables the Department to make regulations which may set a range within which a locally determined fixed penalty amount must fall. Such regulations may also restrict the extent to which and the circumstances in which a council may permit the payment of lesser amounts. Article 18A also enables the Department, by

order, to change the amount of the fixed penalty where no local rate is set by the council.

Section 23 – Exclusion of liability

This section amends the Litter Order by introducing new Article 18B which protects a district council and any other person described in Article 18B(2) against liability to an occupier or owner of land for damages or otherwise arising out of the exercise of certain powers relating to entry on to land (as specified in the Article) in the context of either a litter clearing notice or a litter abatement notice. The circumstances in which this exclusion does not apply are also set out (bad faith, lack of due care, etc.).

Section 24 – Abandoned shopping and luggage trolleys

This section amends Schedule 1 to the Litter Order so as to enable a district council to charge the person believed to be the owner of an abandoned shopping or luggage trolley for its removal, storage and disposal. The charge is payable to the council on demand and is recoverable by the council as a debt due to it.

Section 25 – Section 24: transitional provisions

This section sets out transitional provisions relating to section 24.