



2011 CHAPTER 23

PART 3

LITTER

Offence of dropping litter

Offence of dropping litter in lake, pond or watercourse

14.—(1) Article 3 of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) (offence of dropping litter) shall be amended as follows.

(2) After paragraph (2) insert—

“(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.

(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.”.

Penalty for failing to provide name

15.—(1) Article 5 of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) (enforcement of Articles 3 and 4) shall be amended as follows.

(2) For paragraph (3) substitute—

“(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 or 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.”.

(3) In paragraph (5), after the words “In this Article—” insert—

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

Litter offence: fixed penalty notice

16.—(1) Article 6 of the [Litter \(Northern Ireland\) Order 1994](#) (fixed penalty notices) shall be amended as follows.

(2) For paragraphs (6) and (7) substitute—

“(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.”.

(3) After paragraph (8) insert—

“(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.”

- (4) In paragraph (9) after the words “In this Article—” insert—
- ““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;”.

District council notices

Litter clearing notices

17.—(1) Article 10 of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) (litter control areas) shall cease to have effect.

- (2) After Article 12 of that Order insert—

“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).”.

Street litter control notices

18.—(1) Article 13 of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) (street litter control notices) shall be amended as follows.

(2) After paragraph (3) insert—

“(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.”.

Street litter: supplementary provisions

19.—(1) Article 14 of the [Litter \(Northern Ireland\) Order 1994](#) (street litter: supplementary provisions) shall be amended as follows.

(2) In paragraph (4)(b) after the words “so specified” insert “(including the standards to which any such thing must be done)”.

(3) For paragraphs (8) and (9) substitute—

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

(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.”.

Failure to comply with notice: fixed penalty notices

20. After Article 14 of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) insert—

“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
- (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—

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“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.”.

Free distribution of printed matter

Controls on free distribution of printed matter

21.—(1) The Litter (Northern Ireland) Order 1994 shall be amended as follows.

(2) After Article 14A (as inserted by section 20) insert—

“14B Free distribution of printed matter

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

(3) In that Order, after Schedule 1 insert—

“SCHEDULE 1A

FREE DISTRIBUTION OF PRINTED MATTER ON DESIGNATED

Offence of unauthorised distribution

(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 printed matter if the distribution takes place inside a public service vehicle (within the meaning of the Road Traffic (Northern Ireland) Order 1981).

Designation

- (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 discarding 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

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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

(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

(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

(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

(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 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

(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.”.

Fixed penalty notices: supplementary

Fixed penalty notices: supplementary

22. After Article 18 of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) insert—

“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 for district councils

Exclusion of liability

23. In the [Litter \(Northern Ireland\) Order 1994](#), after Article 18A (as inserted by section 22) insert—

“18B Exclusion of liability

(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).”.

Shopping and luggage trolleys

Abandoned shopping and luggage trolleys

24.—(1) Schedule 1 to the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) (abandoned shopping and luggage trolleys) is amended as follows.

(2) In paragraph 3(2), for the words “seized or removed” substitute “seized and removed”.

(3) After paragraph 3 insert—

“**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.”.

(4) In paragraph 4—

(a) in sub-paragraph (1)—

(i) for the words from “in fixing” to “sufficient” substitute “in fixing the charges to be paid under this Schedule, shall secure that the charges so payable are such as are sufficient”, and

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- (ii) for the words “such trolleys” substitute “shopping or luggage trolleys”, and
- (b) in sub-paragraph (2), after the words “paragraph 3” insert “or 3A”.
- (5) In paragraph 5, after the words “In this Schedule—” insert—
 - ““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;”.

Section 24: transitional provision

25.—(1) This section applies if, before the commencement date, a district council has resolved under Article 19 of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#) that Schedule 1 to that Order is to apply in its district.

(2) If the day specified in the resolution for the coming into operation of Schedule 1 in the council’s district falls on or after the commencement date, the resolution is to be of no effect.

(3) If Schedule 1 applies in the council’s district immediately before the commencement date, the Schedule is to continue to apply in the council’s district on and after the commencement date as it applied before that date.

(4) But Schedule 1 shall not so apply in relation to any shopping or luggage trolley seized by the council on or after the relevant day.

(5) For the purposes of subsection (4) the relevant day is the earlier of—

- (a) the third anniversary of the commencement date;
- (b) if the council resolves under Article 19 of the [Litter \(Northern Ireland\) Order 1994](#) that Schedule 1 (as amended by section 24) is to apply in its district, the day specified in the resolution as the day on which the Schedule (as so amended) comes into force in its district.

(6) So long as Schedule 1 continues to apply as described in subsection (3), the reference to Schedule 1 in Article 19(4) of the [Litter \(Northern Ireland\) Order 1994](#) is to be treated as including a reference to Schedule 1 as it so applies.

(7) If the council resolves under Article 19 that Schedule 1 (as amended by section 24) is to apply in its district, the council may not in giving effect to paragraph 4(1) of Schedule 1 (as so amended) take into account charges payable in relation to shopping or luggage trolleys seized before the Schedule (as so amended) comes into operation in its district.

(8) Nothing in this section prevents the council from bringing to an end the application of Schedule 1 in its district.

(9) In this section—

“the commencement date” is the day on which section 24 comes into operation;

“luggage trolley” and “shopping trolley” have the same meaning as in Schedule 1 to the Litter (Northern Ireland) Order 1994.