
STATUTORY INSTRUMENTS

1994 No. 1896

The Litter (Northern Ireland) Order 1994

Introductory

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.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(1) 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, 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;

“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—

- (a) any higher education institution as defined in Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993(2);
- (b) any college of education as defined in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(3);
- (c) any institution which provides further education as defined in Article 100(2) of the Education Reform (Northern Ireland) Order 1989(4);

(1) 1954 c. 33 (N.I.)
(2) 1993 NI 12
(3) 1986 NI 3
(4) 1989 NI 20

(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(5);

“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 designated 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;

“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(6) but includes a footway;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(7);

“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(8)) 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(9).

(5) 1993 NI 15
 (6) 1993 NI 15
 (7) 1954 c. 33 (N.I.)
 (8) 1994 NI 00
 (9) 1978 NI 19

(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.

(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 droving livestock.

(5) In paragraph (4) “livestock” has the same meaning as in Article 2(2) of the Dogs (Northern Ireland) Order 1983⁽¹⁰⁾.

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.

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

(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.

(4) Without prejudice to the right of any other 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.

(5) In this Article—

“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.

(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 to a district council under a notice under this Article shall, subject to paragraph (7), be £10; and as respects the sums received by the council, those sums shall be paid to the Department.

(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).

(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.

(9) In 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⁽¹¹⁾;

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

Clearing and cleaning land and roads

Duty to keep land and roads clear and clean

7.—(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,
- (e) the governing body of each designated educational institution, as respects its relevant land, and
- (f) the occupier of any relevant land within a litter control area of a district council,

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 paragraphs (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.

(11) 1972 c. 9 (N.I.)

(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 clearing 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 24(1) or 25(1) of the Road Traffic (Northern Ireland) Order 1981(12) (temporary prohibition or restriction of traffic).

(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 1981 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 done 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” has the meaning assigned to it by Article 110(2)(a) of the Road Traffic (Northern Ireland) Order 1981⁽¹³⁾ and “parking place” and “traffic sign” have the meanings assigned to them by Article 2(2) of that Order.

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 but 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 designated 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⁽¹⁴⁾ (functions capable of delegation to a committee) applies.

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

⁽¹³⁾ 1981 NI 1

⁽¹⁴⁾ 1972 c. 9 (N.I.)

- (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.

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) any road;
- (b) any relevant land of a district council;
- (c) any relevant Crown land;
- (d) any relevant land of a designated statutory undertaker;
- (e) any relevant land of a designated educational institution; or
- (f) any relevant land within a litter control area of a district council.

(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,
- (c) any relevant land of a designated educational institution, or
- (d) any relevant land within a litter control area of a district council,

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.

(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.

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.

(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 ownership 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; 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.

(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.

(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.

(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(15).

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
- (b) all street litter control notices issued under Article 13(1).

(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 Part II of the Order of 1978

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

(c) by any person under Article 13.

(2) Regulations may provide that the provisions of Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978(16) shall have effect, with such modifications (if any) as may be prescribed in the regulations—

(a) as if references 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 14 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 36 of that Order.

Transitional provision relating to Article 7

18. For the purposes of the transition to the duties imposed by Article 7 on 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(17) (competition rules for functional work or works contracts).

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.

(16) 1978 NI 19

(17) 1992 NI 6

(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⁽¹⁸⁾ 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⁽¹⁹⁾, 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.

(18) 1972 c. 9

(19) 1981 NI 26

Application to 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 of 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 provisions 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.

Repeals

26. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the third column of that Schedule.

N. H. Nicholls
Clerk of the Privy Council