Abandoned Shopping and Luggage Trolleys

Guidance on Section 99 and Schedule 4 of the Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005
This guidance is part of a series on legislation and powers affected by the Clean Neighbourhoods and Environment Act 2005.

Guidance on the following topics is also available;

- Nuisance and Abandoned Vehicles
- Litter and Refuse
- Defacement Removal Notices
- Waste
- Noise
- Fixed Penalty Notices
- Statutory Nuisance from Insects and Artificial Light

All parts of the guidance can be downloaded from www.defra.gov.uk/environment/localenv/legislation/cnea/index.htm

or alternatively further copies are available from:

Defra Publications
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You may also find it helpful to refer to existing information and guidance on legislation relating to local environmental quality and anti-social behaviour. This is available from the following websites:

www.defra.gov.uk/environment/localenv/index.htm
www.cleanersafergreener.gov.uk
www.together.gov.uk
Overview

1. This document provides guidance on the legislation available for dealing with abandoned shopping and luggage trolleys. It is aimed at providing information on the powers available to local authorities to remedy the problem of abandoned trolleys that have become a blight on the quality of the local environment, are causing harm to wildlife, or are creating a flood hazard in water courses.

2. In the majority of cases such damage can be prevented, and through partnership work between retailers, businesses, local authorities, the Environment Agency and other local organisations, measures can be put in place to avoid trolley losses in the first place, or to ensure swift retrieval before damage occurs.
Environmental Protection Act 1990: Section 99 and Schedule 4

3 Schedule 4 of the Environmental Protection Act 1990 allows a local authority to seize, store and dispose of abandoned shopping and luggage trolleys found in its area. This is an adoptive Schedule under section 99. The provisions allow for costs to be recovered from the owner of the trolleys, and amendments made by the Clean Neighbourhoods and Environment Act 2005 have improved the ability for local authorities to reclaim these charges.

Section 99

4 This section sets out the procedure whereby a local authority may resolve that Schedule 4 will apply in its area. Subsection (5) states that ‘local authority’ means, in England:

- District councils
- London borough councils
- The Common Council of the City of London
- The Council of the Isles of Scilly

5 In summary the local authority must:

- Consult with ‘the persons or representatives of persons who appear to the authority to be persons who will be affected by the application of … Schedule [4]’.

This should include:

(i) retailers known to be providing a trolley service in that area and/or representative bodies such as the British Retail Consortium, the Association of Town Centre Management and the Association of Convenience Stores.

(ii) rail, tram, road transport or airport operators known to be providing a trolley service in that area.

It may also wish to seek the views of the following:
(iii) other businesses and landowners that may be affected by trolley abandonment, local residents and community groups (this may be done by providing details of the proposal in local newspapers, local authority newsletters, etc. and inviting comments).

(iv) the Local Chamber of Trade and Commerce.

(v) the Environment Agency.

(vi) the Police.

- Make the resolution. This needs to state the date on which it will come into force, being not less than three months from the date on which the resolution is passed.

- Publish notice of the resolution in at least one local newspaper, indicating the general effect of the adoption of the Schedule.

- From time to time consult on the operation of Schedule 4 in its area with those who are affected by it. Local authorities are advised to review the operation of the Schedule at least every five years, and monitor the number of trolleys recovered under the Schedule. As part of the review they should consider whether adequate steps are being taken to reduce the number of abandoned trolleys. Earlier review may be necessary if there is a significant change in circumstances.

**Schedule 4**

**Application – paragraph 1**

6 **Subparagraph 1** provides that the Schedule applies to any shopping or luggage trolley that is found by an authorised officer on ‘any land in the open air’, and that appears to him to be abandoned. Definitions of ‘shopping’ and ‘luggage’ trolley are given in paragraph 5:
7 A ‘luggage trolley’ is a trolley provided by a person carrying out a railway, light railway, tramway or road transport undertaking, or an airport operation, to travellers for carrying their luggage to, from or within the premises for the purposes of that undertaking.

8 A ‘shopping trolley’ is a trolley provided by the owner of a shop to customers to enable them to carry goods purchased at the shop.

9 Both definitions exclude power-assisted trolleys. The powers apply to trolleys in any condition, and may therefore be used in relation to broken, unserviceable trolleys, and trolley parts.

10 The term ‘any land in the open air’ may be deemed to apply to land covered by water, allowing the powers in the Schedule to be exercised by a local authority in relation to watercourses. However, the safe removal of trolleys from watercourses may require specialist techniques and an understanding of river conditions. In such cases, Local Authorities are advised to draw on the expertise of specialist contractors and to seek advice, if required, from the Environment Agency, which may also be able to take action under the Water Resources Act 1991. British Waterways should be contacted in relation to trolleys abandoned in their canals, as they also have powers for dealing with them.

11 **Subparagraph (2)** excludes certain types of land from the provisions, namely:

- land in which the owner of the trolley has a legal estate;
- land used for off-street parking and where facilities are provided for leaving shopping trolleys that have been used by customers;
- any other land which has been designated by the local authority for the purpose of providing trolley parking facilities; and
- land used for the transport undertakings for which luggage trolleys may be provided.
Power to seize and remove trolleys – paragraph 2
12 Subparagraph (1) sets out the power enabling a local authority to seize and remove an abandoned trolley.

13 Subparagraph (2) provides that where the land is occupied, the consent of the occupier must be obtained before the trolley can be removed. Alternatively, the local authority may serve a notice on the occupier stating that it intends to remove the trolley. If no notice of objection is received in response, the local authority may remove the trolley after 14 days.

Retention, return and disposal of trolleys – paragraph 3
14 The local authority is required to keep the trolley for a period of six weeks after seizing and removing it. At the end of that period it may sell or otherwise dispose of the trolley.

15 A notice must be served on anyone who appears to be the owner of the trolley under subparagraph (2), as soon as reasonably practicable, and at least within 14 days.

This notice must state that the authority has removed the trolley, give details of where it is being kept, and that the authority may dispose of the trolley if it is not claimed.

16 Subparagraph (3) requires the local authority to deliver the trolley to the owner if it is claimed within the six-week period. However, subparagraph (4) removes the owner’s entitlement to the trolley if he does not pay such charges as the local authority may require.

17 By subparagraph (5), if the trolley is not claimed, the local authority is not permitted to dispose of it unless ‘reasonable enquiries’ have been made to ascertain who owns it.

Retention, return and disposal of trolleys – paragraph 3A
18 Paragraph 3A was inserted by the Clean Neighbourhoods and Environment Act 2005 so as to improve the procedure for cost recovery. It applies where the six-week period has expired, the trolley has not been claimed (or has been claimed but the demanded charges not paid), and the authority is entitled to sell or dispose of it (subparagraph (1)).
In such cases the local authority may charge a person who appears to it to be the owner, an amount to cover the removal, storage and disposal of the trolley (subparagraph (2)).

19 Subparagraph (3) provides that this is payable on demand, and subparagraph (4) that it may be recovered as a debt by the authority if it is not paid.

20 Subparagraph (5) provides a defence against the recovery of the debt, if the person can prove that he was not the owner of the trolley at the time it was removed.

Charges – paragraph 4

21 This paragraph relates to the fixing of charges for dealing with abandoned trolleys. It provides that the local authority may set charges that are sufficient to cover the cost of removing, storing and disposing of shopping or luggage trolleys under the Schedule.

22 Local authorities should set a standard charge within the terms of the legislation, based on the average cost of dealing with abandoned shopping and luggage trolleys in its area. In doing so, local authorities will be able to obtain charges that are as close as possible to the actual costs incurred. These charges may include:

- administrative costs, such as those arising from the notification requirements in paragraphs 2, 3 and 3A above;
- staff time;
- collection and delivery;
- physical storage space.

23 These costs must be regularly reviewed, and should be included in the consultation exercise on the operation of the Schedule required by section 99 Environmental Protection Act 1990. Local authorities should directly notify those persons who are likely to be affected and should also ensure that adequate local publicity is given to the level of the charges.

24 Subparagraph (2) provides that a local authority may agree a trolley collection scheme with persons who own shopping or luggage trolleys in its area, and where such an agreement is made the local authority may not charge costs under the Schedule for any trolleys within the scheme that are recovered by it.
Section 100 of the Clean Neighbourhood & Environment Act 2005 sets out transitional arrangements for the coming into force of the amendments to Schedule 4, where a local authority has already resolved that Schedule 4 will apply in its area prior to the introduction of section 99 of the 2005 Act:

- If the resolution will not come into force until after 5 April 2006, it will have no effect.

- If Schedule 4 already applies in the authority’s area before 6 April 2006, it will continue to do so unamended. However, it will not apply in relation to any shopping or luggage trolley seized on or after 6 April 2009 (the third anniversary of the introduction date), when the previous system automatically lapses.

- Where a local authority which has already adopted Schedule 4 resolves to apply Schedule 4 as amended, the previous arrangements apply until the new ones come into force; however, the authority may not reclaim costs under paragraph 4(1) in relation to trolleys seized under the previous arrangements.