

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 – Graffiti and Other Defacement**

Sections 26 to 30 give an authorised officer of a district council the ability to issue fixed penalty notices to offenders who have perpetrated acts of graffiti or fly-posting. The intention is to levy the penalties only on the persons actually committing these acts, and not in the case of fly-posting on the person (unless he is one and the same) whose goods or services are advertised on the poster.

#### ***Section 26 – Penalty notices for graffiti and fly-posting***

Subsection (1) of this section sets out the power for the authorised officer of a district council, or an authorised person working on the council's behalf, to issue a penalty for the relevant offence (defined in subsection (10)). Subsection (2) excludes from the scope of such offences capable of being dealt with by means of a fixed penalty notice any that is racially or religiously targeted or motivated. Subsection (3) restricts the possibility of being issued with a fixed penalty notice in lieu of prosecution for an offence under Article 84(2) of the Planning (Northern Ireland) Order 1991 to the person personally affixing or placing the unlawful advertisement in question.

Subsection (12) amends Article 87(11) of the Roads (Northern Ireland) Order 1993 to enable a district council, in connection with illegal fly-posting on a road or upon any tree, structure or other works in or on a road, to obtain from the person who printed the advertisement, details of the person for whom or on whose instructions the advertisement was printed.

#### ***Section 27 – Amount of penalty***

This section enables a district council to vary the fixed penalty amount for a graffiti or fly-posting offence in its district. Where no amount is specified by a district council, the amount of the fixed penalty is £75. This amount may be changed by an order made by the Department. In either case, the council may provide for a lesser amount to be paid if early payment is made within a specified period. In addition, the Department may make regulations relating to the fixed

penalty amount, for example to specify a range within which the amount should fall.

### ***Section 28 – Penalty notices: power to require name and address***

This section gives an authorised officer of a district council the power to require the name and address of a person to whom he proposes to give a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

### ***Section 29 – Penalty receipts***

This section provides that penalties issued under section 26 are payable to the district council whose authorised officer gave the fixed penalty notice.

### ***Section 30 - Guidance***

This section permits the Department to issue guidance to district councils in respect of the exercise of their officers' discretion to issue fixed penalty notices under section 26 and about the giving of such notices.

### ***Section 31 – Defacement removal notices***

Subsections (1) and (2) of this section enable a district council to serve a "defacement removal notice" on the owners of street furniture, statutory undertakers and educational institutions whose property is defaced with graffiti or any poster or placard displayed on a relevant surface in contravention of regulations made under Article 67 of the Planning (Northern Ireland) Order 1991 and which is either detrimental to the amenity of the district or offensive.

Subsection (3) sets out that the notice will require them to remove the defacement within a specified period of time, a minimum of 28 days. Subsections (4) and (5) state that if the person responsible for the property fails to remove the defacement, the district council can intervene and clean up the defacement. Subsection (6) requires that the notice should detail the consequences of non-compliance and subsection (7) allows that the council may affix a notice to the offending surface if they are unable to locate the person responsible. Subsections (8) and (9) define the surfaces covered, subsection (10) sets out whom the notice should be served upon and subsection (11) provides the definition of remaining terms.

### ***Section 32 – Recovery of expenditure***

This section sets out the process for district councils to recover costs from the persons responsible for the property they clean under section 31(4).

### ***Section 33 - Guidance***

This section 33 requires the Department to issue guidance on the operation of sections 31 and 32.

### ***Section 34 - Appeals***

This section sets out grounds and processes for appeal against a defacement removal notice.

### ***Section 35 – Exemption from liability in relation to defacement removal notices***

This section 35 sets out the terms of the exemption from liability for damages that protects those taking action to:

- remove the defacement under section 31(4); or
- affix a defacement removal notice under section 31(7).

### ***Section 36 – Removal or obliteration of graffiti, placards and posters***

This section replaces Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 with a new Article 18. Article 18 provides a district council with the power to remove or obliterate graffiti which is detrimental to the amenity of any land in its district or any illegally displayed placards or posters. It also enables a council, in certain circumstances, to recover the costs it incurs in carrying out such removal or obliteration. Under new Article 18, in circumstances where a council gives notice of its intention to remove or obliterate any graffiti, placard or poster, the period of notice is reduced from 14 days to 2 days. The cost of removal will be borne, where possible, by the person who displayed the graffiti, placard or poster or caused it to be displayed or the person whose goods, services or concerns are publicised. Provision is made for compensation to be claimed by a person (other than the person who displayed the graffiti, placard or poster or caused it to be displayed) whose property is damaged by a district council exercising the power to remove or obliterate graffiti, placards or posters.

### ***Section 37 – Sale of aerosol paint to children***

This section makes it an offence to sell aerosol spray paints to persons aged under 18. Subsection (2) contains a definition of aerosol paint container. Subsection (3) sets out the maximum penalty for the offence which is a fine of £2,500. Subsection (4) provides a defence for those who took all reasonable steps to determine the purchaser's age and reasonably believed he was 18 or over. Subsection (5) provides a defence for someone who is charged with an offence but did not carry out the sale himself (such as a shopkeeper) if he took all reasonable steps to avoid the commission of an offence.

Subsection (6) requires district councils to consider, at least once a year, the extent to which it is appropriate to have a programme of enforcement action in relation to this section and, to that extent, to carry out such a programme. Subsection (7) sets out what measures a programme of enforcement action may contain.

***Section 38 – Unlawful display of advertisements***

This section amends Article 84 of the Planning (Northern Ireland) Order 1991 (the Planning Order) and Article 87 of the Roads (Northern Ireland) Order 1993 (the Roads Order) both of which deal with offences relating to the display of advertisements in contravention of Regulations made under Article 67 of the Planning Order. At present, there is a defence for a person, whose goods, trade, business or other concerns are advertised (and in the case of the Planning Order also for a person who is the owner or occupier of the land on which the advertisement is displayed), namely where he proves that the advertisement was displayed without his knowledge or consent. This makes it very hard to secure a conviction. Subsections (2) and (3) of section 38 amend the statutory defence in the Planning Order so that a person has to prove that the advertisement was either displayed without his knowledge; or that he either took all reasonable steps to prevent the display, or to secure its removal after the advertisement had been displayed. Subsections (5) and (6) make similar amendments to the Roads Order.

***Section 39 – Power of district councils to obtain information***

This section enables a district council to serve a notice on any person requiring that person to supply any information which the council reasonably considers it needs for the purposes of any of its functions under Part 4. Subsection (2) provides that Regulations may restrict the information that may be required and determine the form in which it is to be required. Subsection (3) makes it an offence to fail to comply with the requirements of a notice requesting information or to supply false information.