



2011 CHAPTER 23

PART 1

GATING ORDERS

**Gating orders**

1. In the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#), after Article 69 insert—

“PART 6A

RESTRICTION OF RIGHTS OVER ROAD

**Gating orders**

**69A.**—(1) A district council may, with the approval of the Department, make an order under this Article in relation to any relevant road which is situated within its district.

(2) An order under this Article is to be known as a “gating order”.

(3) Before making a gating order in relation to a relevant road the district council must be satisfied that—

- (a) premises adjoining or adjacent to the road are affected by crime or anti-social behaviour;
- (b) the existence of the road is facilitating the persistent commission of criminal offences or anti-social behaviour; and
- (c) it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

- (4) The circumstances referred to in paragraph (3)(c) include—
- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the road;
  - (b) the likely effect of making the order on other persons in the locality; and
  - (c) in a case where the road constitutes a through route, the availability of a reasonably convenient alternative route.
- (5) In this Article “relevant road” means a road other than—
- (a) a special road;
  - (b) a trunk road;
  - (c) a classified road;
  - (d) a road of such other description as the Department may by regulations prescribe.
- (6) For the purposes of this Part “anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as that person.

### **Effect of gating orders**

**69B.**—(1) A gating order restricts, to the extent specified in the order, the public right of way over the road to which it relates.

- (2) A gating order may in particular—
- (a) restrict the public right of way at all times, or in respect of such times, days or periods as may be specified in the order;
  - (b) exclude persons of a description specified in the order from the effect of the restriction.
- (3) A gating order may not be made so as to restrict the public right of way over a road for the occupiers of premises adjoining or adjacent to the road.
- (4) A gating order may not be made so as to restrict the public right of way over a road which is the only or principal means of access to any dwelling.
- (5) In relation to a road which is the only or principal means of access to any premises used for business or recreational purposes, a gating order may not be made so as to restrict the public right of way over the road during periods when those premises are normally used for those purposes.
- (6) A gating order may authorise the installation, operation and maintenance of a barrier or barriers for the purpose of enforcing the restriction provided for in the order.

(7) A district council may install, operate and maintain any barrier authorised under paragraph (6).

(8) A road in relation to which a gating order is made shall not cease to be regarded as a road by reason of the restriction of the public right of way under the order (or by reason of any barrier authorised under this Article).

(9) In paragraph (4) “dwelling” means any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

### **Variation and revocation of gating orders**

**69C.**—(1) A district council may, with the approval of the Department, by order vary a gating order made by the council so as further to restrict any public right of way over the road to which the order relates, if the council is satisfied that in all the circumstances it is expedient to do so for the purpose of reducing crime or anti-social behaviour.

(2) A district council may by order vary a gating order made by it so as to reduce the restriction imposed by the order, if and to the extent that it is satisfied that the restriction is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

(3) A district council may by order revoke a gating order made by it, if it is satisfied that the restriction imposed by the order is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

### **Procedure for orders under this Part**

**69D.**—(1) Before making, varying or revoking a gating order a district council shall publish in the Belfast Gazette and once at least in each of two successive weeks in one or more newspapers circulating in the area in which the road to which the order relates is situated a notice—

- (a) stating the general effect of the proposed order;
- (b) specifying a place in that area where a copy of a draft of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of not less than 30 days from the date of the last publication of the notice; and
- (c) stating that, within that period, any person may, by notice to the council, inform it of the grounds upon which he objects to the making of the order.

(2) The district council shall, not later than the date on which the notice referred to in paragraph (1) is last published, serve a copy of the notice together with a copy of a draft of the order and of any relevant map or plan on—

- (a) the occupiers of premises adjacent to or adjoining the road, and
- (b) the owner of any cables, wires, mains, pipes or other apparatus placed along, across, over or under any road to which the order applies.

(3) In the case of an order under Article 69A(1) or 69C(1), the district council shall, not later than the date on which the notice referred to in paragraph (1) is last published, cause a copy of that notice to be displayed in a prominent position on the road to which the order relates.

(4) Where, before the expiration of the period referred to in paragraph (1)(b), the district council proposes to modify the terms of the draft of an order, the council shall give and publish, in such manner as appears to it to be appropriate, such additional notices as the council considers appropriate for informing all persons likely to be adversely affected by the modification.

(5) If, before the expiration of the period referred to in paragraph (1)(b), the district council receives an objection from any person on whom a copy of the notice is required to be served under paragraph (2) or from any other person appearing to it to be affected, it shall, subject to paragraph (6), cause a local inquiry to be held unless the objection is withdrawn.

(6) Unless the objection is made by a person on whom a notice was served under paragraph (2)(b), the district council may dispense with an inquiry if it is satisfied that it is unnecessary to hold one.

(7) The provisions of Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply in relation to any local inquiry which a district council causes to be held under paragraph (5) as they apply to an inquiry held as mentioned in section 23 of that Act, but with the following modifications—

- (a) in paragraph 1 for the reference to section 23 of that Act substitute a reference to paragraph (5) of this Article and omit the definition of “the Department”;
- (b) in paragraphs 2 to 7 for any reference to the Department substitute a reference to the district council causing the inquiry to be held; and
- (c) in paragraph 7(1) omit the words “, with the approval of the Department of Finance and Personnel.”.

(8) After considering—

- (a) any objections to the proposed order which are not withdrawn; and
- (b) where a local inquiry is held, the report of the person who held it,

the district council may make the order either without modifications or subject to such modifications as it thinks fit.

(9) If it appears to the district council that in any order under this Part the description of any road is in any respect incorrect or insufficiently clear, the council may by order make such modifications in the provisions of that order as may be necessary for correcting or clarifying that description.

(10) Paragraphs (1) to (8) do not apply to an order under paragraph (9), but the council shall publish notice of the making of that order in one or more than one newspaper circulating in the area to which the order relates.

### **Publication and availability of gating orders**

**69E.**—(1) A district council must arrange for—

- (a) the publication of orders made by it under this Part; and
- (b) copies of orders made by it under this Part to be made available to the public.

(2) Arrangements under paragraph (1)(b) may require the payment of a reasonable charge.”.

## **PART 2 VEHICLES**

### *Nuisance parking offences*

#### **Exposing vehicles for sale on a road**

**2.**—(1) A person is guilty of an offence if at any time—

- (a) that person leaves 2 or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale, or
- (b) that person causes 2 or more motor vehicles to be so left.

(2) A person who proves to the satisfaction of the court that that person was not acting for the purposes of a business of selling motor vehicles shall not be convicted of an offence under subsection (1).

(3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) In this section—

“motor vehicle” has the same meaning as in Part 2 of the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#);

“road” has the same meaning as in the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#).

### **Repairing vehicles on a road**

3.—(1) A person who carries out restricted works on a motor vehicle on a road is guilty of an offence.

(2) For the purposes of this section “restricted works” means—

- (a) works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle;
- (b) works for the installation, replacement or renewal of any such part or accessory.

(3) A person is not to be convicted of an offence under this section in relation to any works if that person proves to the satisfaction of the court that the works were not carried out—

- (a) in the course of, or for the purposes of, a business of carrying out restricted works; or
- (b) for gain or reward.

(4) Subsection (3) does not apply where the carrying out of the works gave reasonable cause for annoyance to persons in the vicinity.

(5) A person shall also not be convicted of an offence under this section in relation to any works if that person proves to the satisfaction of the court that the works carried out were works of repair which—

- (a) arose from an accident or breakdown in circumstances where repairs on the spot or elsewhere on the road were necessary; and
- (b) were carried out within 72 hours of the accident or breakdown or were within that period authorised to be carried out at a later time by the district council for the district.

(6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) In this section—

“motor vehicle” has the same meaning as in Part 2 of the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#);

“road” has the same meaning as in the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#).

### *Nuisance parking offences: fixed penalty notices*

### **Power to give fixed penalty notices**

4.—(1) Where on any occasion an authorised officer of a district council has reason to believe that a person has committed an offence under section 2 or 3 in the district of that council, the officer may give that person a notice offering the

person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the district council.

(2) Where a person is given a notice under this section in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of the period of 14 days following the date of the notice; and
- (b) the person shall not be convicted of that offence if the person pays the fixed penalty before the expiration of that period.

(3) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(4) A notice under this section must also state—

- (a) the period during which, by virtue of subsection (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.

(5) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (4) (c) at the address so mentioned.

(6) Where a letter is sent in accordance with subsection (5) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(7) The form of a notice under this section shall be such as the Department may by order prescribe.

(8) The fixed penalty payable to the district council under this section is, subject to subsection (9), £100.

(9) The Department may by order substitute a different amount for the amount for the time being specified in subsection (8).

(10) The district council to which a fixed penalty is payable under this section 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 district council.

(11) The Department may by regulations restrict the extent to which, and the circumstances in which, a district council may make provision under subsection (10).

(12) 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.

(13) In this section “authorised officer”, in relation to a district council, means an employee of a district council who is authorised in writing by the council for the purpose of giving notices under this section.

#### **Power to require name and address**

**5.**—(1) If an authorised officer of a district council proposes to give a person a notice under section 4, the officer may require that person to provide the officer with the person’s name and address.

(2) A person who—

- (a) fails to give the person’s name and address when required to do so under subsection (1), or
- (b) gives a false or inaccurate name or address in response to a requirement under that subsection,

commits an offence.

(3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section “authorised officer” has the same meaning as in section 4.

#### **Use of fixed penalty receipts**

**6.**—(1) This section applies in relation to amounts paid to a district council in pursuance of notices under section 4 (its “fixed penalty receipts”).

(2) A district council may use its fixed penalty receipts only for the purposes of—

- (a) its functions under Part 2 of the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#);
- (b) its functions relating to the enforcement of sections 2 and 3;
- (c) its functions under Part 8 of the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#);
- (d) such other of its functions as may be specified in regulations made by the Department.

(3) Regulations under subsection (2)(d) may (in particular) have the effect that a council may use its fixed penalty receipts for the purposes of any of its functions.

(4) A district council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.

(5) The Department may by regulations—



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*Status: This is the original version (as it was originally enacted).*

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- (a) make provision for what a district council is to do with its fixed penalty receipts—
    - (i) pending their being used for the purposes of functions of the council referred to in subsection (2);
    - (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
  - (b) make provision for accounting arrangements in respect of a district council's fixed penalty receipts.
- (6) The provision that may be made under subsection (5)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the district council.
- (7) Before making regulations under this section, the Department shall consult—
- (a) district councils;
  - (b) such other persons as the Department thinks fit.

#### *Abandoned vehicles*

#### **Offence of abandoning a vehicle: fixed penalty notices**

7. In the Pollution Control and Local Government (Northern Ireland) Order 1978, after Article 29 (offence of unauthorised abandonment of motor vehicles etc.) insert—

#### **“Fixed penalty notices for offence of abandoning vehicles**

**29A.**—(1) Where on any occasion it appears to an authorised officer of a district council that a person has committed an offence under Article 29(1) (a) in the district of that council, the 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.

(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 the period of 14 days following the date of that notice; and
- (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

(3) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(4) A notice under this Article shall also state—

- (a) the period during which, by virtue of 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.

(5) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in paragraph (4)(c) at the address so mentioned.

(6) Where a letter is sent in accordance with paragraph (5) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(7) The form of a notice under this Article shall be such as the Department may by order prescribe.

(8) The fixed penalty payable to a district council under this Article is, subject to paragraph (9), £200.

(9) The Department may by order substitute a different amount for the amount for the time being specified in paragraph (8).

(10) 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.

(11) The Department may by regulations restrict the extent to which, and the circumstances in which, a district council may make provision under paragraph (10).

(12) 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.

(13) In this Article—

“authorised officer”, in relation to a district council, means an employee of the council who is authorised in writing by the council for the purpose 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.

**Fixed penalty notices: power to require name and address**

**29B.**—(1) If an authorised officer of a district council proposes to give a person a notice under Article 29A, the officer may require the person to give him his name and address.

(2) A person commits an offence if—

- (a) he fails to give his name and address when required to do so under paragraph (1), or
- (b) he gives a false or inaccurate name or address in response to a requirement under that paragraph.

(3) A person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this Article “authorised officer” has the same meaning as in Article 29A.

**Use of fixed penalties under Article 29A**

**29C.**—(1) This Article applies in relation to amounts paid to a district council in pursuance of notices under Article 29A (its “fixed penalty receipts”).

(2) A district council may use its fixed penalty receipts only for the purposes of—

- (a) its functions under this Part;
- (b) its functions under Part 8 of the Road Traffic Regulation (Northern Ireland) Order 1997;
- (c) its functions relating to the enforcement of sections 2 and 3 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011; and
- (d) such other of its functions as may be specified in regulations made by the Department.

(3) Regulations made under paragraph (2)(d) may in particular have the effect that a district council may use its fixed penalty receipts for the purposes of any of its functions.

(4) A district council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.

(5) The Department may by regulations—

- (a) make provision for what a district council is to do with its fixed penalty receipts—
  - (i) pending their being used for the purposes of functions of the council referred to in paragraph (2);

- (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
- (b) make provision for accounting arrangements in respect of a district council's fixed penalty receipts.
- (6) The provision that may be made under paragraph (5)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the district council.
- (7) Before making regulations under this Article, the Department shall consult—
  - (a) district councils;
  - (b) such other persons as the Department thinks fit.”.

#### **Notice of removal of vehicle by district council**

**8.**—(1) Article 30 of the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#) (removal of abandoned vehicles) shall be amended as follows.

(2) For paragraph (2) substitute—

“(2) Where it appears to a district council that the land on which a motor vehicle is abandoned as aforesaid is occupied by any person, the council shall before removing the vehicle under paragraph (1) serve on that person notice that it proposes to remove the vehicle and the council shall not be entitled to remove it if within the prescribed period that person serves on the council notice that he objects to the proposal.

(2A) Paragraph (2) does not apply where the vehicle is abandoned on a road.

(2B) A district council shall not be required under paragraph (1) to remove a vehicle situated otherwise than on a carriageway if it appears to the council that the cost of its removal to the nearest convenient carriageway would be unreasonably high.”.

(3) Omit paragraph (3).

(4) In paragraph (4) omit the words from “other than” to “paragraph (3)”.

#### **Disposal of removed vehicle by district council**

**9.**—(1) The [Pollution Control and Local Government \(Northern Ireland\) Order 1978](#) shall be amended as follows.

(2) In Article 31 (disposal of removed vehicles), in paragraph (1)—

(a) for sub-paragraphs (a) and (b) substitute—

- “(a) in the case of a vehicle which in the opinion of the district council is in such a condition that it ought to be destroyed, at any time in the course of or after its removal;
- (b) in the case of a vehicle, not falling within sub-paragraph (a), which—
- (i) does not display a licence (whether current or otherwise and whether or not the vehicle is required to display a licence), and
- (ii) does not display any registration mark (whether indicating registration within or outside the United Kingdom),
- at any time in the course of or after its removal;”;
- (b) omit the words from “but, in a case” to the end.
- (3) Omit paragraph (2) of Article 31.
- (4) In Article 36(1) (interpretation, etc., of Part 2), in the definition of “licence” after the words “the Vehicle Excise and Registration Act 1994” insert “(including a nil licence within the meaning of that Act)”.

### **Guidance**

**10.** In the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#), after Article 31 (disposal of removed vehicles) insert—

#### **“Guidance**

**31A.** A district council in exercising any function conferred under Article 30 or 31 shall have regard to any guidance given for the purpose by the Department.”.

### *Illegally parked vehicles*

#### **Notice of removal of vehicle**

**11.—(1)** In Article 48 of the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#) (power of constable to remove vehicles), omit paragraph (4).

(2) In Article 49 of that Order (power of Department to remove vehicles), omit paragraph (4).

#### **Disposal of vehicle by police officer**

**12.—(1)** Article 51 of the [Road Traffic Regulation \(Northern Ireland\) Order 1997](#) (disposal of vehicles by a police officer) shall be amended as follows.

(2) In paragraph (2), in sub-paragraph (a), omit the words from “and on which” to “at the time of its removal”.

(3) In that paragraph, for sub-paragraph (b) substitute—

“(b) in the case of a vehicle, not falling within sub-paragraph (a), which—

(i) does not display a licence (whether current or otherwise and whether or not the vehicle is required to display a licence), and

(ii) does not display any registration mark (whether indicating registration within or outside the United Kingdom),

any time in the course of or after its removal;”.

(4) In that paragraph, in sub-paragraph (c)(ii) after the words “the notice was served” insert “or such other period as may be prescribed”.

(5) In that paragraph, omit the words from “but, in a case” to the end.

(6) Omit paragraph (3).

(7) In paragraph (7), in the definition of “licence”, after the words “the Vehicle and Excise Registration Act 1994” insert “(including a nil licence within the meaning of that Act)”.

### **Disposal of vehicle by Department**

**13.—**(1) Article 52 of the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#) (disposal of vehicles by the Department) shall be amended as follows.

(2) In paragraph (2), in sub-paragraph (a), omit the words from “and on which” to “at the time of its removal”.

(3) In that paragraph, for sub-paragraph (b) substitute—

“(b) in the case of a vehicle, not falling within sub-paragraph (a), which—

(i) does not display a licence (whether current or otherwise and whether or not the vehicle is required to display a licence), and

(ii) does not display any registration mark (whether indicating registration within or outside the United Kingdom),

any time in the course of or after its removal;”.

(4) In that paragraph, in sub-paragraph (c)(ii) after the words “the notice was served” insert “or such other period as may be prescribed”.

(5) In that paragraph, omit the words from “but, in a case” to the end.

(6) Omit paragraph (3).

## 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—

“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 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

(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.

## PART 4

### GRAFFITI AND OTHER DEFACEMENT

#### *Penalty notices for graffiti and fly-posting*

#### **Penalty notices for graffiti and fly-posting**

**26.—**(1) Where an authorised officer of a district council has reason to believe that a person has committed a relevant offence in the district of that council, the officer may give that person a notice offering that person the opportunity of

discharging any liability to conviction for that offence by payment of a penalty in accordance with the notice.

(2) But an authorised officer shall not give a notice under subsection (1) if the officer considers that the commission of the relevant offence was motivated (wholly or partly) by hostility—

- (a) towards a person based upon that person's membership (or presumed membership) of a racial or religious group, or
- (b) towards members of a racial or religious group based on their membership of that group.

(3) In the case of a relevant offence under Article 84(2) of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#), an authorised officer shall not give a notice to a person under subsection (1) in relation to the display of an advertisement unless the officer has reason to believe that that person personally affixed or placed the advertisement to, against or upon the land or object on which the advertisement is or was displayed.

(4) Where a person is given a notice under subsection (1) in respect of an offence—

- (a) no proceedings shall be instituted for that offence (or any other relevant offence arising out of the same circumstances) before the expiration of the period of 14 days following the date of the notice, and
- (b) that person shall not be convicted of that offence (or any other relevant offence arising out of the same circumstances) if before the expiration of that period that person pays the penalty in accordance with the notice.

(5) A notice under subsection (1) must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(6) A notice under subsection (1) shall also state—

- (a) the period during which, by virtue of subsection (4), proceedings will not be instituted for the offence,
- (b) the amount of the penalty, and
- (c) the person to whom and the address at which the penalty may be paid.

(7) Without prejudice to payment by any other method, payment of a penalty in pursuance of a notice under subsection (1) may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (6)(c) at the address so mentioned.

(8) Where a letter is sent in accordance with subsection (7) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(9) A notice under subsection (1) shall be in such form as the Department may by order prescribe.

(10) In this section—

“advertisement” has the meaning given by Article 2(2) of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#);

“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 this section;
- (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;

“racial group” has the meaning given by Article 5(1) of the [Race Relations \(Northern Ireland\) Order 1997 \(NI 4\)](#);

“relevant offence” means—

- (a) an offence under Article 33 of the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#) (interference with, or damage to, traffic signs), which involves only an act of defacement;
- (b) an offence under Article 87(1) of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) (painting, making marks or displaying advertisements on roads);
- (c) an offence under Article 84(2) of the [Planning \(Northern Ireland\) Order 1991](#) (displaying advertisement in contravention of regulations made under Article 67 of that Order);

“religious group” has the meaning given by Article 2(5) of the [Criminal Justice \(No. 2\) \(Northern Ireland\) Order 2004 \(NI 15\)](#).

(11) The definitions of “membership” and “presumed” in Article 2(5) of the [Criminal Justice \(No. 2\) \(Northern Ireland\) Order 2004 \(NI 15\)](#) shall apply for the purposes of subsection (2) as they apply for the purposes of Article 2(3) of that Order.

(12) In Article 87(11) of the [Roads \(Northern Ireland\) Order 1993](#) at the end add “and to an authorised officer of a district council (within the meaning of section 26 of the [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011](#)) acting in connection with an offence under paragraph (1).”.

### **Amount of penalty**

**27.—(1)** The amount of a penalty payable in pursuance of a notice under section 26(1)—

- (a) is the amount specified by a district council in relation to its district, or
- (b) if no amount is so specified, is £75.

(2) The district council to which a penalty is payable in pursuance of a notice under section 26(1) 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) The Department may by regulations make provision in connection with the powers conferred under subsections (1)(a) and (2).

(4) Regulations under subsection (3) may (in particular)—

- (a) require an amount specified under subsection (1)(a) to fall within a range prescribed in the regulations;
- (b) restrict the extent to which, and the circumstances in which, a district council can make provision under subsection (2).

(5) The Department may by order substitute a different amount for the amount for the time being specified in subsection (1)(b).

#### **Penalty notices: power to require name and address**

**28.—**(1) If an authorised officer of a district council proposes to give a person a notice under section 26(1), the officer may require the person to give the officer that person's name and address.

(2) A person who—

- (a) fails to give that person's name and address when required to do so under subsection (1), or
- (b) gives a false or inaccurate name or address in response to a requirement under that subsection,

commits an offence.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section "authorised officer" has the same meaning as in section 26.

#### **Penalty receipts**

**29.—**(1) The fixed penalty payable in pursuance of a notice under section 26(1) is payable to the district council whose authorised officer gave the notice.

(2) 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 penalty payable in pursuance of a notice under section 26(1) was or was not received by a date specified in the certificate,

is evidence of the facts stated.



**Guidance**

- 30.**—(1) The Department may issue guidance to district councils about—
- (a) the exercise of the discretion to give notices under section 26(1); and
  - (b) the giving of such notices.
- (2) A district council shall have regard to any guidance issued under this section.

*Removal of graffiti and fly-posters***Defacement removal notices**

- 31.**—(1) This section applies where a district council is satisfied—
- (a) that a relevant surface in the district of the council has been defaced by graffiti or any poster or placard the display of which contravenes regulations under Article 67 of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#), and
  - (b) that the defacement is detrimental to the amenity of that district or is offensive.
- (2) The council may serve a notice (a “defacement removal notice”) upon any person who is responsible for the surface imposing the requirement mentioned in subsection (3).
- (3) That requirement is a requirement that the defacement be removed, cleared or otherwise remedied within a period specified in the notice being not less than 28 days beginning with the day on which the notice is served.
- (4) If the requirement mentioned in subsection (3) is not complied with, the council or any person authorised by the council may remove, clear or otherwise remedy the defacement.
- (5) In exercising the power under subsection (4) the council or any person authorised by the council may enter any land to the extent reasonably necessary for that purpose.
- (6) A defacement removal notice must explain the effect of subsections (4) and (5) and sections 32 and 34.
- (7) Where after reasonable enquiry a district council is unable to ascertain the name or address of any person who is responsible for a relevant surface, the council may—
- (a) affix a defacement removal notice to the surface, and
  - (b) enter any land to the extent reasonably necessary for that purpose;
- and that notice shall be treated as having been served upon a person responsible for the surface.

(8) In this section and in section 35 a “relevant surface” is any of the following surfaces, whether internal or external or open to the air or not—

- (a) the surface of any street or of any building, structure, apparatus, plant or other object in or on any street;
- (b) the surface of any land owned, occupied or controlled by a statutory undertaker or of any building, structure, apparatus, plant or other object in or on any such land;
- (c) the surface of any land owned, occupied or controlled by an educational institution (including its governing body) or of any building, structure, apparatus, plant or other object in or on any such land.

(9) But a surface is not a relevant surface unless—

- (a) in the case of a surface within subsection (8)(a), the street is public land;
- (b) in the case of a surface within subsection (8)(b) or (c)—
  - (i) the land is public land,
  - (ii) the surface is visible from public land, or
  - (iii) the surface is otherwise visible to members of the public using the services or facilities of the statutory undertaker or educational institution in question or any other statutory undertaker or educational institution.

(10) A person is responsible for a relevant surface if—

- (a) where it is the surface of any land (including a street), that person owns, leases, occupies, controls, operates or maintains the land, and
- (b) where it is the surface of any other thing mentioned in subsection (8), that person owns, leases, occupies, controls, operates or maintains the thing.

(11) In this section and in sections 32 to 35—

“defacement removal notice” has the meaning given by subsection (2),

“educational institution” has the meaning given by Article 2(2) of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#),

“graffiti” includes painting, writing, soiling, marking or other defacing by whatever means,

“public land” means land to which the public are entitled or permitted to have access with or without payment (including any street to which the public are so entitled or permitted),

“statutory undertaker” has the meaning given by Article 2(2) of the [Litter \(Northern Ireland\) Order 1994](#),

“street” has the meaning given by Article 3(1) of the [Street Works \(Northern Ireland\) Order 1995 \(NI 19\)](#).

**Recovery of expenditure**

**32.—(1)** A district council may recover from the person on whom a defacement removal notice was served expenditure reasonably incurred in exercise of the power under section 31(4).

(2) A district council may not recover expenditure from a person under subsection (1) unless it has served on that person a notice which sets out the amount of, and details of, the expenditure which it proposes to recover.

**Guidance**

**33.—(1)** The Department shall issue guidance to district councils for the purposes of sections 31 and 32.

(2) A district council shall have regard to any guidance issued under this section.

**Appeals**

**34.—(1)** A person on whom a defacement removal notice is served may, within the period of 21 days beginning with the day on which it is served, appeal against the notice to a court of summary jurisdiction on any of the following grounds.

(2) They are—

- (a) that the defacement is neither detrimental to the amenity of the district nor offensive,
- (b) that there is a material defect or error in, or in connection with, the notice,
- (c) that the notice should be served on another person.

(3) Where an appeal under subsection (1) is brought, the defacement removal notice shall be of no effect pending the final determination or withdrawal of the appeal.

(4) On the determination of such an appeal, the court of summary jurisdiction must do one of the following—

- (a) quash the notice,
- (b) modify the notice,
- (c) dismiss the appeal.

(5) Where the court modifies the notice or dismisses the appeal, it may extend the period specified in the notice.

(6) A person on whom a notice under section 32(2) is served may, within the period of 21 days beginning with the day on which it is served, appeal to a court of summary jurisdiction on the grounds that the expenditure which the district council is proposing to recover is excessive.

(7) On the determination of an appeal under subsection (6), the court of summary jurisdiction must do either of the following—

- (a) confirm that the amount which the council is proposing to recover is reasonable, or
- (b) substitute a lower amount as the amount which the council is entitled to recover.

### **Exemption from liability in relation to defacement removal notices**

**35.**—(1) None of the persons mentioned in subsection (2) shall have any liability to any person responsible for the relevant surface 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—

- (a) the power under subsection (4) of section 31 (including as provided for in subsection (5) of that section), or
- (b) the power under subsection (7) of that section.

(2) Those persons are—

- (a) in the case of the power mentioned in subsection (1)(a)—
  - (i) the district council and any employee of the council, and
  - (ii) any person authorised by the district council under section 31(4) and the employer or any employee of that person, and
- (b) in the case of the power mentioned in subsection (1)(b) the district council and any employee of the council.

(3) Subsection (1) does not apply—

- (a) if the act or omission is shown to have been 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 made 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 (c. 42).

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).

(5) Section 31(10) shall apply for the purposes of this section as it applies for the purposes of that section.

### **Removal or obliteration of graffiti, placards and posters**

**36.** For Article 18 of the [Local Government \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1985 \(NI 15\)](#) (removal of graffiti and fly posters) substitute—

**“Removal or obliteration of graffiti, placards and posters**

**18.—(1)** Subject to the following provisions of this Article, a district council may remove or obliterate—

- (a) any graffiti which, in the opinion of the council, is detrimental to the amenity of any land in its district;
- (b) any placard or poster which is displayed in its district and which, in the opinion of the council, is so displayed in contravention of regulations under Article 67 of the Planning (Northern Ireland) Order 1991.

(2) Where any graffiti, placard or poster to which sub-paragraph (a) or (b) of paragraph (1) applies identifies the person who displayed it or caused it to be displayed, a district council may give that person notice in writing—

- (a) that the council is of the opinion mentioned in that sub-paragraph in respect of the graffiti, placard or poster specified in the notice;
- (b) requiring that graffiti, placard or poster to be removed or obliterated within the period of 2 days beginning with the date of service of the notice; and
- (c) stating the effect of paragraph (3).

(3) Where—

- (a) a district council serves a notice on a person under paragraph (2) in relation to any graffiti, placard or poster, and
- (b) the person fails to remove or obliterate it within the period mentioned in that paragraph,

the council may recover summarily as a civil debt from that person the expenses it may reasonably incur in exercising its power under paragraph (1).

(4) Where—

- (a) any graffiti, placard or poster to which paragraph (1)(a) or (b) applies does not identify the person who displayed it or caused it to be displayed, but
- (b) the graffiti, placard or poster publicises the goods, services or concerns of an identifiable person,

paragraphs (2) and (3) have effect as if the reference in paragraph (2) to the person who displayed the graffiti, placard or poster or caused it to be displayed were a reference to the person whose goods, services or concerns are publicised.

(5) For the purpose of exercising any power under paragraph (1) a person authorised in writing by the council for the purposes of this Article may at any reasonable time enter any land if—

- (a) the land is unoccupied, and
- (b) it would be impossible to exercise the power without entering the land.

(6) Where any damage is caused to land or chattels in the exercise of any power under paragraph (1), compensation may be recovered from the district council exercising the power by any person suffering the damage (other than the person who displayed the graffiti, placard or poster or caused it to be displayed).

(7) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(8) Nothing in this Article authorises the removal or obliteration of any graffiti, placard or poster displayed—

- (a) within a building to which there is no public right of access; or
- (b) on land owned or occupied by a body established by or under a statutory provision.

(9) This Article and Article 19 are without prejudice to Article 67 of the Planning (Northern Ireland) Order 1991 (control of advertisements), and to Article 84 of that Order (enforcement of advertisement control), and to any regulations made under that Order by virtue of those Articles.”

### *Aerosol paints*

#### **Sale of aerosol paint to children**

**37.—**(1) A person who sells an aerosol paint container to a person under the age of 18 commits an offence.

(2) In subsection (1) “aerosol paint container” means a device which—

- (a) contains paint stored under pressure, and
- (b) is designed to permit the release of the paint as a spray.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) It is a defence for a person charged with an offence under this section in respect of a sale to prove that—

- (a) that person took all reasonable steps to determine the purchaser’s age, and
- (b) that person reasonably believed that the purchaser was not under the age of 18.

(5) It is a defence for a person charged with an offence under this section in respect of a sale effected by another person to prove that that person (the defendant) took all reasonable steps to avoid the commission of an offence under this section.

- (6) It shall be the duty of a district council—
- (a) to consider, at least once in every period of 12 months, the extent to which it is appropriate for it to carry out a programme of enforcement action in relation to this section, and
  - (b) to the extent that it considers it appropriate to do so, carry out such a programme.
- (7) For the purposes of subsection (6), a programme of enforcement action in relation to this section is a programme involving all or any of the following—
- (a) the bringing of prosecutions in respect of offences under this section;
  - (b) the investigation of complaints in respect of alleged offences under this section;
  - (c) the taking of other measures intended to reduce the incidence of offences under this section.

### *Advertisements*

#### **Unlawful display of advertisements**

**38.**—(1) Article 84 of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#) (enforcement of advertisement control) shall be amended in accordance with subsections (2) and (3).

(2) In paragraph (3) for “that it was displayed without his knowledge or consent” substitute “either of the matters specified in paragraph (4)”.

(3) After that paragraph insert—

“(4) The matters are that—

- (a) the advertisement was displayed without his knowledge; or
- (b) he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.”.

(4) Article 87 of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) (control of advertisements, etc.) is amended in accordance with subsections (5) and (6).

(5) In paragraph (9) for “that it was displayed without his knowledge or consent” substitute “either of the matters specified in paragraph (9A)”.

(6) After that paragraph insert—

“(9A) The matters are that—

- (a) the advertisement was displayed without his knowledge; or
- (b) he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.”.

(7) This section does not have effect in relation to an offence committed, or alleged to have been committed, before the commencement of this section.

### *Supplementary*

#### **Power of district councils to obtain information**

**39.**—(1) Subject to subsection (2), a district council may serve on any person a notice requiring that person to supply 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 Part.

(2) Regulations may restrict the information which may be required under subsection (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 under this section, or
- (b) in supplying any information in compliance with such a notice, makes any statement which that person knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## PART 5

### DOGS

#### *Dog control orders*

#### **Power to make dog control orders**

**40.**—(1) A district council may in accordance with this Part make an order providing for an offence or offences relating to the control of dogs in respect of any land in its district to which this Part applies.

(2) An order under subsection (1) shall be known as a “dog control order”.

(3) For the purposes of this Part an offence relates to the control of dogs if it relates to one of the following matters—

- (a) fouling of land by dogs and the removal of dog faeces;
- (b) the keeping of dogs on leads;
- (c) the exclusion of dogs from land;
- (d) the number of dogs which a person may take on to any land.



(4) An offence provided for in a dog control order must be an offence which is prescribed for the purposes of this section by regulations made by the Department.

(5) Regulations under subsection (4) may in particular—

- (a) specify all or part of the wording to be used in a dog control order for the purpose of providing for any offence;
- (b) permit a dog control order to specify the times at which, or periods during which, an offence is to apply;
- (c) provide for an offence to be defined by reference to failure to comply with the directions of a person of a description specified in the regulations.

(6) A dog control order may specify the land in respect of which it applies specifically or by description.

(7) A dog control order may be revoked or amended by the council which made it; but this Part applies in relation to any amendment of a dog control order as if it were the making of a new order.

#### **Dog control orders: supplementary**

**41.—**(1) The Department shall by regulations prescribe the penalties, or maximum penalties, which may be provided for in a dog control order in relation to any offence.

(2) Regulations under subsection (1) may not in any case permit a dog control order to provide for a penalty other than a fine not exceeding level 3 on the standard scale in relation to any offence.

(3) The Department shall by regulations prescribe such other requirements relating to the content and form of a dog control order as the Department thinks fit.

(4) The Department shall by regulations prescribe the procedure to be followed by a district council before and after making a dog control order.

(5) Regulations under subsection (4) shall in particular include provision as to—

- (a) consultation to be undertaken before a dog control order is made;
- (b) the publicising of a dog control order after it has been made.

#### **Land to which this Part applies**

**42.—**(1) Subject to this section, this Part applies to any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment).

(2) For the purposes of this section, any land which is covered is to be treated as land which is “open to the air” if it is open to the air on at least one side.

(3) The Department may by order designate land as land to which this Part does not apply (generally or for such purposes as may be specified in the order).

(4) Land may be designated under subsection (3) specifically or by description.

(5) Where a private Act confers powers on a person other than a district council for the regulation of any land, that person may, by notice in writing given to the district council in whose district the land is situated, exclude the application of this Part to that land.

#### *Fixed penalty notices*

#### **Fixed penalty notices for contravention of dog control order**

**43.—**(1) This section applies where on any occasion an authorised officer of a district council has reason to believe that a person has committed an offence under a dog control order made by that council.

(2) The authorised officer may give that person a notice offering that person the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

(3) A fixed penalty payable under this section is payable to the district council whose officer gave the notice.

(4) Where a person is given a notice under this section in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiration of the period of 14 days following the date of the notice; and
- (b) that person may not be convicted of that offence if that person pays the fixed penalty before the expiration of that period.

(5) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(6) A notice under this section must also state—

- (a) the period during which, by virtue of subsection (4), 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.

(7) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (6) (c) at the address so mentioned.

(8) Where a letter is sent in accordance with subsection (7) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(9) The form of a notice under this section is to be such as the Department may by order prescribe.

(10) 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.

(11) In this section “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 section;
- (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.

#### **Amount of fixed penalties**

**44.—**(1) The amount of a fixed penalty payable to a district council in pursuance of a notice under section 43 in respect of an offence under a dog control order—

- (a) is the amount specified by the district council which made the order;
- (b) if no amount is so specified, is £75.

(2) A district council may under subsection (1)(a) specify different amounts in relation to different offences.

(3) A district council may make provision for treating a fixed penalty payable to that council in pursuance of a notice under section 43 as having been paid if a lesser amount is paid before the end of a period specified by the council.

(4) The Department may by regulations make provision in connection with the powers conferred on district councils under subsections (1)(a) and (3).

(5) Regulations under subsection (4) may (in particular)—

- (a) require an amount specified under subsection (1)(a) to fall within a range prescribed in the regulations;
- (b) restrict the extent to which, and the circumstances in which, a district council can make provision under subsection (3).

(6) The Department may by order substitute a different amount for the amount for the time being specified in subsection (1)(b).

#### **Power to require name and address**

**45.**—(1) If an authorised officer of a district council proposes to give a person a notice under section 43, the officer may require the person to give the officer that person’s name and address.

(2) A person who—

- (a) fails to give that person’s name and address when required to do so under subsection (1), or
- (b) gives a false or inaccurate name or address in response to a requirement under that subsection,

commits an offence.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section “authorised officer” has the same meaning as in section 43.

#### *Supplementary*

#### **Byelaws**

**46.**—(1) Where, apart from this subsection, a district council has at any time power to make a byelaw in relation to any matter specified in any of paragraphs (a) to (d) of section 40(3) as respects any land, it may not make such a byelaw if at that time it has power under this Part to make a dog control order as respects that land in relation to the matter specified in that paragraph.

(2) Subsection (1) does not affect any byelaw which the district council had power to make at the time it was made.

(3) Where a dog control order is made in relation to any matter specified in any of paragraphs (a) to (d) of section 40(3) as respects any land, any byelaw previously made by a district council which has the effect of making a person guilty of any offence in relation to the matter specified in that paragraph as respects that land shall cease to have that effect.

(4) Where any act or omission would, apart from this subsection, constitute an offence under a dog control order and any byelaw, the act or omission shall not constitute an offence under the byelaw.

#### **Power of district councils to obtain information**

**47.**—(1) Subject to subsection (2), a district council may serve on any person a notice requiring that person to supply 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 Part.

(2) Regulations may restrict the information which may be required under subsection (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 under this section, or
- (b) in supplying any information in compliance with such a notice, makes any statement which that person knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## PART 6

### NOISE

#### CHAPTER 1

##### AUDIBLE INTRUDER ALARMS

###### *Alarm notification areas*

#### **Designation of alarm notification areas**

**48.—**(1) A district council may designate all or any part of its district as an alarm notification area.

(2) If a district council proposes to designate an area as an alarm notification area it must arrange for notice of the proposal to be published in a newspaper circulating in the area.

(3) The notice must state—

- (a) that representations may be made to the council about the proposal;
- (b) that any such representations must be made before a specified date.

(4) The specified date must be at least 28 days after the date on which the notice is published in accordance with subsection (2).

(5) The district council must consider any representations about the proposal which it receives before the specified date.

(6) If a district council decides to designate an area as an alarm notification area it must—

- (a) arrange for notice of the decision to be published in a newspaper circulating in the area, and
  - (b) send a copy of the notice to the address of all premises in the area.
- (7) The notice must specify the date on which the designation is to have effect.
- (8) The date specified must be at least 28 days after the date on which the notice is published in accordance with subsection (6)(a).
- (9) If a district council decides not to designate an area as an alarm notification area it must arrange for notice of the decision to be published in a newspaper circulating in the area.

### **Withdrawal of designation**

- 49.—**(1) A district council which has designated an area as an alarm notification area may withdraw the designation.
- (2) If a district council decides to withdraw a designation of an area as an alarm notification area, it must—
- (a) arrange for notice of the decision to be published in a newspaper circulating in the area, and
  - (b) send a copy of the notice to the addresses of all premises in the area.
- (3) The notice must specify the date on which the withdrawal of the designation is to have effect.

### **Notification of nominated key-holders**

- 50.—**(1) This section and section 51 apply in relation to premises if—
- (a) the premises are in an area designated by a district council as an alarm notification area, and
  - (b) an audible intruder alarm has been installed in or on the premises.
- (2) The responsible person must—
- (a) nominate a key-holder in respect of the premises in accordance with section 51;
  - (b) notify the council in writing before the end of the required period of the name, address and telephone number of the key-holder nominated in respect of the premises in accordance with that section.
- (3) The required period for the purposes of subsection (2)(b) is the period before the end of which the key-holder is required to be nominated in accordance with section 51.
- (4) A person who fails to comply with a requirement of subsection (2) commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Nomination of key-holders**

**51.**—(1) The responsible person must before the end of the required period nominate a person as a key-holder in respect of the premises.

(2) The required period for the purposes of subsection (1) is—

- (a) if the alarm was installed before the date on which the designation of the area had effect, the period of 28 days starting with that date;
- (b) if the alarm was installed on or after that date, the period of 28 days starting with the date on which the installation was completed.

(3) A person may be nominated as a key-holder in respect of premises under this section only if—

- (a) that person holds keys sufficient to enable access to be gained to the part of the premises in which the controls for the alarm are situated;
- (b) that person normally resides or is situated in the vicinity of the premises;
- (c) that person has information sufficient to enable the alarm to be silenced;
- (d) that person agrees to be a nominated key-holder in respect of the premises;
- (e) where the premises are residential premises, that person falls within subsection (4);
- (f) where the premises are non-residential premises, that person falls within subsection (5).

(4) A person falls within this subsection if that person is—

- (a) an individual who is not the occupier of the premises, or
- (b) a key-holding company.

(5) A person falls within this subsection if that person is—

- (a) an individual who—
  - (i) is the responsible person, or
  - (ii) is acting on behalf of the responsible person, if the responsible person is not an individual, or
- (b) a key-holding company.

(6) If the responsible person becomes aware that a person who has been nominated as a key-holder in respect of premises under this section no longer satisfies one or more of the requirements in subsection (3), the responsible person must before the end of the required period nominate another person as a key-holder in respect of the premises.

(7) The required period for the purposes of subsection (6) is the period of 28 days starting with the date on which the responsible person becomes aware of that fact.

(8) In this section—

“key-holding company” means a body corporate or an unincorporated association—

(a) the business of which consists of or includes holding keys, and

(b) which is capable of being contacted at any hour of the day;

“non-residential premises” means premises which are not residential premises;

“residential premises” means premises all or part of which comprise a dwelling.

### **Offences under section 50: fixed penalty notices**

**52.—**(1) This section applies if it appears to an authorised officer of a district council that a person has committed an offence under section 50(4) in the district of the district council.

(2) The officer may give the person a notice offering the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

(3) If a person is given a notice under this section in respect of an offence—

(a) no proceedings may be instituted for the offence before the end of the period of 14 days starting with the day after that on which the notice is given, and

(b) that person may not be convicted of the offence if that person pays the fixed penalty before the end of that period.

(4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(5) A notice under this section must also state—

(a) the period during which, by virtue of subsection (3), 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.

(6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5) (c) at the address so mentioned.



(7) If a letter is sent in accordance with subsection (6) payment is to be regarded as having been made at the time at which the letter would be delivered in the ordinary course of post.

(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,

is evidence of the facts stated.

(9) The form of a notice under this section is to be such as the Department may by order prescribe.

(10) In this section “authorised officer”, in relation to a district council, means—

- (a) an employee of the council who is authorised in writing by the council for the purpose of giving notices under this section;
- (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;
- (c) any employee of such a person who is authorised in writing by the council for the purpose of giving such notices.

### **Amount of fixed penalty**

**53.—**(1) This section applies in relation to a penalty payable to a district council in pursuance of a notice under section 52.

(2) The amount of the penalty is—

- (a) the amount specified by the district council in relation to its district, or
- (b) if no amount is so specified, £75.

(3) The district council may make provision for treating the penalty as having been paid if a lesser amount is paid before the end of a period specified by the council.

(4) The Department may by regulations make provision in connection with the powers conferred on district councils under subsections (2)(a) and (3).

(5) Regulations under subsection (4) may (in particular)—

- (a) require an amount specified under subsection (2)(a) to fall within a range prescribed in the regulations;
- (b) restrict the extent to which, and the circumstances in which, a council can make provision under subsection (3).

(6) The Department may by order substitute a different amount for the amount for the time being specified in subsection (2)(b).

**Use of fixed penalty receipts**

**54.**—(1) A district council may use any sums it receives in respect of fixed penalties payable in pursuance of notices given under section 52 (its “penalty receipts”) only for the purposes of functions of the council that are qualifying functions.

(2) The following are qualifying functions for the purposes of this section—

- (a) functions under this Chapter;
- (b) functions under the Noise Act 1996 (c. 37);
- (c) functions under section 63 to 70 (statutory nuisances), in connection with statutory nuisances falling with section 63(1)(i) or (j) (noise);
- (d) functions of a description specified in regulations made by the Department.

(3) Regulations under subsection (2)(d) may (in particular) have the effect that a district council may use its penalty receipts for the purposes of any of its functions.

(4) A district council must supply the Department with such information relating to the use of its penalty receipts as the Department may require.

(5) The Department may by regulations—

- (a) make provision for what a council is to do with its penalty receipts—
  - (i) pending their being used for the purposes of qualifying functions of the council;
  - (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
- (b) make provision for accounting arrangements in respect of a council’s penalty receipts.

(6) The provision that may be made under subsection (5)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the district council.

(7) Before making regulations under this section the Department must consult—

- (a) district councils, and
- (b) such other persons as the Department thinks fit.

**Fixed penalty notices: power to require name and address**

**55.**—(1) If an authorised officer of a district council proposes to give a person a notice under section 52, the officer may require the person to give the officer the person’s name and address.

(2) A person commits an offence if—

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*Status: This is the original version (as it was originally enacted).*

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- (a) that person fails to give that person's name and address when required to do so under subsection (1), or
  - (b) that person gives a false or inaccurate name or address in response to a requirement under that subsection.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) "Authorised officer" has the meaning given in section 52.

#### *Powers in relation to alarms*

#### **Power of entry**

**56.—**(1) This section applies if an authorised officer of a district council is satisfied that the conditions in subsection (2) are met in relation to an audible intruder alarm installed in or on premises in the district of the district council.

- (2) The conditions are—
- (a) that the alarm has been sounding continuously for more than 20 minutes or intermittently for more than one hour;
  - (b) that the sounding of the alarm is likely to give persons living or working in the vicinity of the premises reasonable cause for annoyance;
  - (c) if the premises are in an alarm notification area, that reasonable steps have been taken to get the nominated key-holder to silence the alarm.
- (3) The officer may enter the premises for the purpose of silencing the alarm.
- (4) The officer may not enter premises by force under this section.
- (5) The officer must, if required, show evidence of the officer's authority to act under this section.

- (6) In this section—

"authorised officer" means an officer of a district council who is authorised by the council (generally or specifically) for the purposes of this section;

"nominated key-holder", in respect of premises in the district of a district council, means a person in respect of whom the council has received notification in accordance with section 50(2)(b).

#### **Warrant to enter premises by force**

**57.—**(1) This section applies if, on an application made by an authorised officer of a district council, a lay magistrate is satisfied—

- (a) that the conditions in section 56(2)(a) and (b) are met in relation to an audible intruder alarm installed in or on premises in the district of the district council,

- (b) if the premises are in an alarm notification area, that the condition in section 56(2)(c) is met, and
  - (c) that the officer is unable to gain entry to the premises without the use of force.
- (2) The lay magistrate may issue a warrant authorising the officer to enter the premises, using reasonable force if necessary, for the purpose of silencing the alarm.
- (3) Before applying for a warrant under this section, the officer must leave a notice at the premises stating—
- (a) that the officer is satisfied that the sounding of the alarm is likely to give persons living or working in the vicinity of the premises reasonable cause for annoyance, and
  - (b) that an application is to be made for a warrant authorising the officer to enter the premises, using reasonable force if necessary, for the purpose of silencing the alarm.
- (4) The officer must, if required, show evidence of a warrant issued under this section.
- (5) “Authorised officer” has the meaning given in section 56.

**Powers of entry: supplementary**

**58.**—(1) This section applies where an officer of a district council enters any premises under section 56 or under a warrant issued under section 57.

(2) The officer may take any steps the officer thinks necessary for the purpose of silencing the alarm.

(3) The officer may take to the premises—

- (a) such other persons, and
- (b) such equipment,

as the officer thinks necessary for the purpose of silencing the alarm.

(4) The officer and any person who enters the premises by virtue of subsection (3) must not cause more damage to or disturbance at the premises than is necessary for the purpose of silencing the alarm.

(5) If the premises are unoccupied or (where the premises are occupied) the occupier of the premises is temporarily absent the officer must—

- (a) leave a notice at the premises stating what action has been taken on the premises under this section and section 56 or 57;
- (b) leave the premises (so far as is reasonably practicable) as effectively secured against entry as the officer found them.

(6) But the officer is not required by virtue of subsection (5)(b) to re-set the alarm.

(7) Any expenses reasonably incurred by the district council in connection with entering the premises, silencing the alarm and complying with subsection (5) may be recovered by the council from the responsible person.

(8) A warrant under section 57 continues in force until—

- (a) the alarm has been silenced, and
- (b) the officer has complied with subsection (5) (if that subsection applies).

(9) Nothing done by, or by a member of, a district council or by an officer of or another person authorised by a district council, if done in good faith for the purposes of section 56 or 57 or this section, is to subject the council or any of those persons personally to any action, liability, claim or demand.

(10) Subsection (9) does not apply 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 (c. 42).

### *Interpretation of Chapter*

#### **Interpretation of this Chapter**

**59.—**(1) In this Chapter—

“alarm notification area” means an area in respect of which a designation under section 48 has effect;

“the occupier” in respect of premises means (subject to subsection (2))—

- (a) a person occupying the premises, or
- (b) if the premises are unoccupied, a person entitled to occupy the premises (other than the owner);

“premises” does not include a vehicle;

“the responsible person” in respect of premises means—

- (a) the occupier, or
- (b) if there is no occupier, the owner.

(2) The fact that a person is occupying premises is to be disregarded for the purposes of this Chapter if—

- (a) the premises comprise a building that is being erected, constructed, altered, improved, maintained, cleaned or repaired,
- (b) the person is occupying the premises in connection with the erection, construction, alteration, improvement, maintenance, cleaning or repair, and
- (c) the person is doing so by virtue of a licence granted for less than 4 weeks.

## CHAPTER 2

## AMENDMENTS TO THE NOISE ACT 1996

**Dealing with noise at night**

**60.**—(1) The Noise Act 1996 (c. 37) is amended as follows.

(2) For section 1 (adoption of provisions by district councils or by order of the Department) substitute—

**“1 Application of sections 2 to 9**

1. Sections 2 to 9 apply to the district of every district council.”

(3) For section 2(1) (district council under duty to investigate complaint of noise from dwelling at night) substitute—

“(1) A district council may, if it receives a complaint of the kind mentioned in subsection (2), arrange for an officer of the council to take reasonable steps to investigate the complaint.”

(4) In section 2(7) (power of district council to act in relation to dwelling within district of another council), omit the words from “and accordingly” to the end.

**Noise offences: fixed penalty notices**

**61.**—(1) In section 8 of the Noise Act 1996, omit subsection (8) (amount of fixed penalty).

(2) After that section insert—

**“8A Amount of fixed penalty**

(1) This section applies in relation to a fixed penalty payable to a district council in pursuance of a notice under section 8.

(2) In the case of an offence under section 4 the amount of the fixed penalty—

(a) is the amount specified by the district council in relation to the council’s district, or

(b) if no amount is so specified, is £100.

(3) In the case of an offence under section 4A the amount of the fixed penalty is £500.

(4) A district council may make provision for treating the fixed penalty payable in the case of an offence under section 4 as having been paid if a lesser amount is paid before the end of a period specified by the council.

(5) The Department may by regulations make provision in connection with the powers conferred on district councils under subsections (2)(a) and (4).

(6) Regulations under subsection (5) may (in particular)—

- (a) require an amount specified under subsection (2)(a) to fall within a range prescribed in the regulations;
- (b) restrict the extent to which, and the circumstances in which, a district council can make provision under subsection (4).

(7) The Department may by order substitute a different amount for the amount for the time being specified in subsection (2)(b) or (3).

### **8B Fixed penalty notices: power to require name and address**

(1) If an officer of a district council who is authorised for the purposes of section 8 proposes to give a person a fixed penalty notice, the officer may require the person to give him his name and address.

(2) A person commits an offence if—

- (a) he fails to give his name and address when required to do so under subsection (1), or
- (b) he gives a false or inaccurate name or address in response to a requirement under that subsection.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) In section 9 of the Noise Act 1996 (c. 37) (section 8: supplementary), for subsection (4) substitute—

“(4) A district council may use any sums it receives under section 8 (its “penalty receipts”) only for the purposes of functions of the council that are qualifying functions.

(4A) The following are qualifying functions for the purposes of this section—

- (a) functions under this Act;
- (b) functions under Chapter 1 of Part 6 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011;
- (c) functions under section 63 to 70 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (statutory nuisances), in connection with statutory nuisances falling with section 63(1)(i) or (j) (noise) of that Act;
- (d) functions of a description specified in regulations made by the Department.

(4B) Regulations under subsection (4A)(d) may (in particular) have the effect that a district council may use its penalty receipts for the purposes of any of its functions.

(4C) A district council must supply the Department with such information relating to the use of its penalty receipts as the Department may require.

(4D) The Department may by regulations—

(a) make provision for what a district council is to do with its penalty receipts—

(i) pending their being used for the purposes of qualifying functions of the council;

(ii) if they are not so used before such time after their receipt as may be specified by the regulations;

(b) make provision for accounting arrangements in respect of a district council's penalty receipts.

(4E) The provision that may be made under subsection (4D)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the district council.

(4F) Before making regulations under this section, the Department must consult—

(a) district councils, and

(b) such other persons as the Department considers appropriate.”

(4) In section 11 of the Noise Act 1996 (c. 37) (interpretation and subordinate legislation)—

(a) in subsection (3) after the word “orders”, in both places where it occurs, insert “or regulations” and after “section” insert “8A(7) or”;

(b) after subsection (3) insert—

“(4) An order under section 8A(7) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.”.

#### **Extension of Noise Act 1996 to licensed premises etc.**

**62.** Schedule 1 (which makes provision amending the Noise Act 1996 so that it applies to licensed premises etc.) has effect.



## PART 7

### STATUTORY NUISANCES

#### Statutory nuisances

**63.**—(1) Subject to subsections (2) to (9), the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
  - (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
  - (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
  - (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
  - (e) any accumulation or deposit which is prejudicial to health or a nuisance;
  - (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
  - (g) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
  - (h) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
  - (i) noise emitted from premises so as to be prejudicial to health or a nuisance;
  - (j) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;
  - (k) any lake, watercourse, privy, urinal, cesspool, drain or ashpit which is so foul or in such a state as to be prejudicial to health or a nuisance;
  - (l) any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health;
  - (m) any private dwelling so overcrowded as to be prejudicial to the health of those living there or a nuisance;
  - (n) any other matter declared by any statutory provision to be a statutory nuisance.
- (2) Subsections (1)(b), (h) and (i) do not apply in relation to premises—
- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
  - (b) occupied by or for the purposes of a visiting force.
- (3) Subsection (1)(b) does not apply to—

- (a) smoke emitted from a chimney of a private dwelling within a smoke control area,
- (b) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,
- (c) smoke emitted from a railway locomotive steam engine, or
- (d) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) does not apply to steam emitted from a railway locomotive engine.

(6) Subsection (1)(g) does not apply to insects that are wild animals included in Schedule 5 to the [Wildlife \(Northern Ireland\) Order 1985 \(NI 2\)](#) (animals which are protected at all times).

(7) Subsection (1)(h) does not apply to artificial light emitted from—

- (a) an airport;
- (b) harbour premises;
- (c) railway premises;
- (d) a bus station;
- (e) a public service vehicle operating centre;
- (f) a goods vehicle operating centre;
- (g) a lighthouse;
- (h) a prison.

(8) Subsection (1)(i) does not apply to noise caused by aircraft other than model aircraft.

(9) Subsection (1)(j) does not apply to noise made—

- (a) by traffic,
- (b) by any naval, military or air force of the Crown or by a visiting force, or
- (c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.

(10) In this Part—

“airport” has the meaning given by Article 2 of the [Airports \(Northern Ireland\) Order 1994 \(NI 1\)](#);

“bus station” has the same meaning as in Article 2(2) of the [Licensing \(Northern Ireland\) Order 1996 \(NI 22\)](#);

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“equipment” includes a musical instrument;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

“goods vehicle operating centre” means an operating centre within the meaning given by section 6(3) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (c. 2);

“harbour premises” means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition “harbour area” and “harbour operations” have the same meaning as in Part 3 of the Aviation and Maritime Security Act 1990 (c. 31);

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“lake” includes any pool, pond, or reservoir of any description;

“lighthouse” has the same meaning as in Part 8 of the Merchant Shipping Act 1995 (c. 21);

“noise” includes vibration;

“owner”, in relation to any premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in that person’s own right or as agent or trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let;

“person responsible”—

- (a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;
- (b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under the [Vehicle Excise and Registration Act 1994 \(c. 22\)](#) and any other person who is for the time being the driver of the vehicle;
- (c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“premises” includes land and, subject to subsection (16) and section 68(9), any vessel;

“prison” includes—

- (a) a young offenders centre within the meaning of section 33 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29);
- (b) a juvenile justice centre within the meaning of Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);

“private dwelling” means any building, or part of a building, used or intended to be used as a dwelling;

“public service vehicle operating centre” means a place at which public service vehicles are normally kept for the purposes of a business and for the purposes of this definition “public service vehicle” has the same meaning as in Article 2(2) of the Road Traffic (Northern Ireland) Order 1981 (NI 1);

“railway premises” means any land occupied by the railway undertaking within the meaning of section 55 of the Transport Act (Northern Ireland) 1967 (c. 37);

“smoke” includes soot, ash, grit and gritty particles emitted in smoke;

“street” means a street within the meaning of Article 3 of the Street Works (Northern Ireland) Order 1995 (NI 19);

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952 (c. 67);

“watercourse” has the same meaning as in the Drainage (Northern Ireland) Order 1973 (NI 1);

and any expressions used in this section and in the Clean Air (Northern Ireland) Order 1981 (NI 4) (except for “owner”) have the same meaning in this section as in that Order and Article 2(3) of that Order shall apply for the interpretation of the expression “dark smoke” and the operation of this Part in relation to it.

(11) In this Part “relevant industrial, trade or business premises” means premises that are industrial, trade or business premises as defined in subsection (10), but excluding—

- (a) land used as arable, grazing, meadow or pasture land,
- (b) land used as osier land, reed beds or woodland,
- (c) land used for market gardens, nursery grounds or orchards,
- (d) land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the Department,

- (e) land included in an area of special scientific interest in relation to which a declaration under Article 28(1) of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#) has effect, and
- (f) any land covered by, and the waters of, any watercourse or lake.

(12) For the purposes of subsection (11)—

“agricultural” has the same meaning as in section 43(1) of the Agriculture Act (Northern Ireland) 1949 (c. 2);

“agricultural unit” means land which is occupied as a unit for agricultural purposes.

(13) In this Part “best practicable means” is to be interpreted by reference to the following provisions—

- (a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;
- (b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;
- (c) the test is to apply only so far as compatible with any duty imposed by law;
- (d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under Article 51 of the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#) (codes of practice for minimising noise) is applicable, regard shall also be had to guidance given in it.

(14) A district council shall not without the consent of the Department institute summary proceedings under this Part in respect of a nuisance falling within paragraphs (b), (d), (e), (h) or (i) of subsection (1) if proceedings in respect thereof might be instituted under—

- (a) regulations under Article 4 of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#); or
- (b) the [Industrial Pollution Control \(Northern Ireland\) Order 1997 \(NI 18\)](#).

(15) The district of a district council which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (16) and section 68(9), this Part shall have effect, in relation to any area included in the district of a district council by virtue of this subsection—

- (a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

- (b) with such other modifications, if any, as are prescribed in regulations made by the Department.

(16) A vessel powered by steam reciprocating machinery is not a vessel to which this Part applies.

#### **Duty of district council to inspect for statutory nuisance**

**64.** It shall be the duty of every district council—

- (a) to cause its district to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 65 or 66, and
- (b) where a complaint of a statutory nuisance is made to it by a person living within its district, to take such steps as are reasonably practicable to investigate the complaint.

#### **Summary proceedings for statutory nuisances**

**65.—(1)** Subject to subsection (3) where a district council is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the district of the council, the district council shall serve a notice (“an abatement notice”) imposing all or any of the following requirements—

- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence,
- (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) Subject to section 66(1), the abatement notice shall be served—

- (a) except in a case falling within paragraph (b) or (c), on the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, on the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

(3) Where a district council is satisfied that a statutory nuisance falling within paragraph (i) of section 63(1) exists, or is likely to occur or recur, in the district of the council, the council shall—

- (a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2); or
- (b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

(4) If a district council has taken steps under subsection (3)(b) and either of the conditions in subsection (5) is satisfied, the council shall serve an abatement notice in respect of the nuisance.

(5) The conditions are—

(a) that the district council is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;

(b) that the council is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the district of the council.

(6) The relevant period is the period of 7 days starting with the day on which the council was first satisfied that the nuisance existed, or was likely to occur or recur.

(7) The appropriate person is the person on whom the council would otherwise be required under subsection (3)(a) to serve an abatement notice in respect of the nuisance.

(8) A person served with an abatement notice may appeal against the notice to a court of summary jurisdiction within the period of 21 days beginning with the date on which the notice was served.

(9) A person on whom an abatement notice is served who without reasonable excuse contravenes or fails to comply with any requirement or prohibition imposed by the notice shall be guilty of an offence.

(10) Except in a case falling within subsection (11), a person who commits an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(11) A person who commits an offence under subsection (9) on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000.

(12) Subject to subsection (13), in any proceedings for an offence under paragraph (9) in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(13) The defence under subsection (12) is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f), (g) or (i) of section 63(1) except where the nuisance arises on industrial, trade or business premises;

- (b) in the case of a nuisance falling within paragraph (h) of section 63(1) except where—
  - (i) the artificial light is emitted from industrial, trade or business premises; or
  - (ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;
- (c) in the case of a nuisance falling within paragraph (j) of section 63(1) except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;
- (d) in the case of a nuisance falling within paragraph (b) of section 63(1) except where the smoke is emitted from a chimney; and
- (e) in the case of a nuisance falling within paragraph (c) or (n) of section 63(1).

(14) For the purposes of subsection (13)(b) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.

(15) For the purposes of subsection (14) “relevant sport” means a sport that is designated for those purposes by order made by the Department, and a sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

(16) In subsection (14) “domestic premises” means—

- (a) premises used wholly or mainly as a private dwelling, or
- (b) land or other premises belonging to, or enjoyed with, premises so used.

(17) In proceedings for an offence under subsection (9) in respect of a statutory nuisance falling within paragraph (i) or (j) of section 63(1) where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) it shall be a defence to prove—

- (a) that the alleged offence was covered by a notice served under Article 40 or a consent given under Article 41 or 45 of the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#) (construction sites, etc.); or
- (b) where the alleged offence was committed at a time when the premises were subject to a notice under Article 46 of that Order (reduction of noise levels), that the level of noise emitted from the premises at that time was not such as to constitute a contravention of the notice under that Article; or
- (c) where the alleged offence was committed at a time when the premises were not subject to a notice under Article 46 of that Order, and when a level fixed under Article 47 of that Order (new buildings liable to abatement order), applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.



(18) Paragraphs (b) and (c) of subsection (17) apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

#### **Abatement notice in respect of noise in the street**

**66.—**(1) In the case of a statutory nuisance within section 63(1)(j) that—

- (a) has not yet occurred, or
- (b) arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment,

the abatement notice shall be served in accordance with subsection (2).

(2) The notice shall be served—

- (a) where the person responsible for the vehicle, machinery or equipment can be found, on that person;
- (b) where that person cannot be found or where the district council determines that this paragraph should apply, by fixing the notice to the vehicle, machinery or equipment.

(3) Where—

- (a) an abatement notice is served in accordance with subsection (2)(b) by virtue of a determination of the district council, and
- (b) the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,

a copy of the notice shall be served on that person accordingly.

(4) Where an abatement notice is served in accordance with subsection (2)(b) by virtue of a determination of the district council, the notice shall state that, if a copy of the notice is subsequently served under subsection (3), the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.

(5) Where an abatement notice is served in accordance with subsection (2)(b), the person responsible for the vehicle, machinery or equipment may appeal against the notice under section 65(8) as if that person had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment.

(6) Section 65(9) shall apply in relation to a person on whom a copy of an abatement notice is served under subsection (3) as if the copy were the notice itself.

(7) A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with subsection (2)(b) shall be guilty of an offence, unless that person is the person responsible for the vehicle, machinery or equipment or does so with the authority of that person.

(8) A person who commits an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Supplementary provisions**

67.—(1) Subject to subsection (2), where more than one person is responsible for a statutory nuisance section 65 shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(2) In relation to a statutory nuisance within section 63(1)(j) for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), section 65(2)(a) shall apply with the substitution of “any one of the persons” for “the person”.

(3) In relation to a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, section 66 shall apply with the substitution—

- (a) in subsection (2)(a), of the words “any of the persons” for “the person” and of “one such person” for “that person”,
- (b) in subsection (2)(b), of the words “such a person” for “that person”,
- (c) in subsection (3), of the words “any of the persons” for “the person” and of “one such person” for “that person”,
- (d) in subsection (5), of the words “any person” for “the person”, and
- (e) in subsection (7), of the words “a person” for “the person” and of “such a person” for “that person”.

(4) Where a statutory nuisance which exists or has occurred within the district of a district council, or which has affected any part of that district, appears to the council to be wholly or partly caused by some act or default committed or taking place outside the district, the district council may act under section 65 as if the act or default were wholly within that district, except that any appeal shall be heard by a court of summary jurisdiction having jurisdiction where the act or default is alleged to have taken place.

(5) Where an abatement notice has not been complied with the district council may, whether or not it takes proceedings for an offence under section 65(9), abate the nuisance and do whatever may be necessary in execution of the notice.

(6) Any expenses reasonably incurred by a district council in abating, or preventing the recurrence of, a statutory nuisance under subsection (5) may be recovered by it from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court consider fair and reasonable.

(7) If a district council is of opinion that proceedings for an offence under section 65(9) would afford an inadequate remedy in the case of any statutory nuisance, it may, subject to subsection (8), take proceedings in the High Court for the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the district council has suffered no damage from the nuisance.

(8) In any proceedings under subsection (7) in respect of a nuisance falling within paragraph (i) or (j) of section 63(1), it shall be a defence to prove that the noise was authorised by a notice under Article 40 or a consent under Article 41 (construction sites), of the [Pollution Control and Local Government \(Northern Ireland\) Order 1978 \(NI 19\)](#).

(9) The further supplementary provisions in Schedule 2 shall have effect.

### **Expenses recoverable from owner to be a charge on premises**

**68.—**(1) Where any expenses are recoverable under section 67(6) from a person who is the owner of the premises there mentioned and the district council serves a notice on that person under this section—

- (a) the expenses shall carry interest, at such reasonable rate as the district council may determine, from the date of service of the notice until the whole amount is paid, and
- (b) subject to the following provisions of this section, the expenses and accrued interest shall be a charge on the premises.

(2) A notice served under this section shall—

- (a) specify the amount of the expenses that the district council claims is recoverable,
- (b) state the effect of subsection (1) and the rate of interest determined by the district council under that subsection, and
- (c) state the effect of subsections (4) to (6).

(3) On the date on which a district council serves a notice on a person under this section the council shall also serve a copy of the notice on every other person who, to the knowledge of the council, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under subsection (7)(b) or (c), the amount of any expenses specified in a notice under this section and the accrued interest shall be a charge on the premises—

- (a) as from the end of the period of 21 days beginning with the date of service of the notice, or
- (b) where an appeal is brought under subsection (6), as from the final determination of the appeal,

until the expenses and interest are recovered.

(5) For the purposes of subsection (4), the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this section may appeal against the notice to the county court within the period of 21 days beginning with the date of service.

(7) On such an appeal the court may—

- (a) confirm the notice without modification,
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it, or
- (c) order that the notice is to be of no effect.

(8) In paragraph 1 of Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) after sub-paragraph (c) insert—

“(ca) section 68 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011; or”.

(9) In this section “premises” does not include a vessel.

#### **Payment of expenses by instalments**

**69.**—(1) Where any expenses are a charge on premises under section 68, the district council may by order declare the expenses to be payable with interest by instalments within the specified period, until the whole amount is paid.

(2) In subsection (1)—

“interest” means interest at the rate determined by the council under section 68(1), and

“the specified period” means such period of 30 years or less from the date of service of the notice under section 68 as is specified in the order.

(3) Subject to subsection (5), the instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises.

(4) Any sums recovered from an occupier may be deducted by the occupier from the rent of the premises.

(5) An occupier shall not be required to pay at any one time any sum greater than the aggregate of—

- (a) the amount that was due on account of rent at the date on which the occupier was served with a demand from the district council together with a notice requiring the occupier not to pay rent to the landlord without deducting the sum demanded, and
- (b) the amount that has become due from the occupier on account of rent since that date.

**Summary proceedings by persons aggrieved by statutory nuisances**

**70.—(1)** A court of summary jurisdiction may act under this section on a complaint made by any person on the ground that that person is aggrieved by the existence of a statutory nuisance.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises or, in the case of a nuisance within section 63(1)(j), in the same street, the court shall make an order for either or both of the following purposes—

- (a) requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
- (b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence;

and may also impose on the defendant a fine not exceeding level 5 on the standard scale.

(3) If the court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render premises unfit for human habitation, an order under subsection (2) may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purpose.

(4) Proceedings for an order under subsection (2) shall be brought—

- (a) except in a case falling within paragraph (b), (c) or (d), against the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, against the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises;
- (d) in the case of a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment, against the person responsible for the vehicle, machinery or equipment.

(5) Subject to subsection (6), where more than one person is responsible for a statutory nuisance, subsections (1) to (4) shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(6) In relation to a statutory nuisance within section 63(1)(j) for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), subsection (4)(a) shall apply with the substitution of “each person responsible for the nuisance who can be found” for “the person responsible for the nuisance”.

(7) In relation to a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, subsection (4)(d) shall apply with the substitution of “any person” for “the person”.

(8) Before instituting proceedings for an order under subsection (2) against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of the aggrieved person’s intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.

(9) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (8) which is applicable is—

- (a) in the case of a nuisance falling within paragraph (i) or (j) of section 63(1), not less than 3 days’ notice; and
- (b) in the case of a nuisance of any other description, not less than 21 days’ notice;

but the Department may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

(10) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(11) Subject to subsection (12), in any proceedings for an offence under subsection (10) in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(12) The defence under subsection (11) is not available—

- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f), (g) or (i) of section 63(1) except where the nuisance arises on industrial, trade or business premises;
- (b) in the case of a nuisance falling within paragraph (h) of section 63(1) except where—
  - (i) the artificial light is emitted from industrial, trade or business premises, or
  - (ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;

- (c) in the case of a nuisance falling within paragraph (j) of section 63(1) except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;
- (d) in the case of a nuisance falling within paragraph (b) of section 63(1) except where the smoke is emitted from a chimney;
- (e) in the case of a nuisance falling within paragraph (c) or (n) of section 63(1); and
- (f) in the case of a nuisance which is such as to render the premises unfit for human habitation.

(13) For the purposes of subsection (12)(b) a relevant sports facility has the same meaning as in section 65(14).

(14) If a person is convicted of an offence under subsection (10), a court of summary jurisdiction may, after giving the district council in whose district the nuisance has occurred an opportunity of being heard, direct the council to do anything which the person convicted was required to do by the order to which the conviction relates.

(15) Where on the hearing of proceedings for an order under subsection (2) it is proved that the alleged nuisance existed at the date of the making of the complaint then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate that person for any expenses properly incurred by that person in the proceedings.

(16) If it appears to the court that neither the person responsible for the nuisance nor the owner or occupier of the premises or (as the case may be) the person responsible for the vehicle, machinery or equipment can be found the court may, after giving the district council in whose district the nuisance has occurred an opportunity of being heard, direct the council to do anything which the court would have ordered that person to do.

### **Application of this Part to Crown**

**71.—**(1) Subject to the provisions of this section, the provisions of this Part and of regulations and orders made under it shall bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) No contravention by the Crown of any provision of this Part or of any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application of any district council charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in subsection (2), the provisions of this Part 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) In this section any reference to the Crown includes the Crown in right of Her Majesty's Government in the United Kingdom.

## PART 8

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Use of fixed penalty receipts*

##### **Use of penalty receipts**

**72.**—(1) This section applies in relation to amounts paid to a district council in pursuance of—

- (a) notices under Article 6 and Article 14A of, and paragraph 7 of Schedule 1A to, the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#);
- (b) notices under section 26;
- (c) notices under section 43.

(2) The amounts to which this section applies which are paid to a district council are in this section called the council's "fixed penalty receipts".

(3) A district council may use its fixed penalty receipts only for the purposes of qualifying functions of the council.

(4) For the purposes of this section the "qualifying functions" of a council are—

- (a) its functions under the [Litter \(Northern Ireland\) Order 1994](#);
- (b) its functions under section 26;
- (c) its functions under Part 5; and
- (d) such other of its functions as may be specified in regulations made by the Department.

(5) Regulations under subsection (4)(d) may (in particular) have the effect that a council may use its fixed penalty receipts for the purposes of any of its functions.

(6) A district council must supply the Department with such information relating to its fixed penalty receipts as the Department may require.

(7) The Department may by regulations—

- (a) make provision for what a council is to do with its fixed penalty receipts—



- (i) pending their being used for the purposes of qualifying functions of the council;
  - (ii) if they are not so used before such time after their receipt as may be specified by the regulations;
  - (b) make provision for accounting arrangements in respect of a council's fixed penalty receipts.
- (8) The provision that may be made under subsection (7)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.
- (9) Before making regulations under this section, the Department must consult—
- (a) district councils;
  - (b) such other persons as the Department thinks fit.

*Increase of penalty for pollution offences*

**Offences relating to pollution etc.: penalties on conviction**

73. In paragraph 25 of Schedule 1 to the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#) (purposes for which regulations may be made under Article 4: offences), in sub-paragraph (2)(a)(ii) for the words “£30,000” substitute “£50,000”.

*Offences by bodies corporate*

**Offences by bodies corporate**

74. For the purposes of this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954 ([c. 33](#)) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

*Supplementary*

**Regulations and orders**

75.—(1) Orders and regulations made by the Department under this Act may include such incidental, supplementary, consequential, transitory, transitional or saving provisions as the Department considers appropriate.

(2) Subject to subsections (3), (4) and (5), orders and regulations made by the Department under this Act shall be subject to negative resolution.

(3) An order under—

- (a) section 4(9),
- (b) section 27(5),
- (c) section 44(6), or
- (d) section 53(6),

shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(4) Regulations under section 40(4) and section 41(1) shall not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(5) Subsection (2) does not apply to an order under section 78 or an order under paragraph 5 of Schedule 2.

### **Interpretation**

**76.** In this Act—

“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 (c. 9);

“the Department” means the Department of the Environment;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

### **Minor and consequential amendments and repeals**

**77.—**(1) The statutory provisions set out in Schedule 3 have effect subject to the amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 4 are repealed to the extent specified in the second column of that Schedule.

(3) The Department may by order repeal or amend any provision of any local Act passed before this Act or of any order or other instrument made under a local Act so passed if it appears to it that the provision is inconsistent with, or has become unnecessary or requires alteration in consequence of, any provision of this Act or corresponds to any provision repealed by this Act.

### **Commencement**

**78.** The provisions of this Act, except for this section and sections 75, 76 and 79, come into operation on such day or days as the Department may by order appoint.

### **Short title**

**79.** This Act may be cited as the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011.