



2011 CHAPTER 23

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.