

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT (NORTHERN IRELAND) 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 which received Royal Assent on 4 May 2011. They have been prepared by the Department of the Environment in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not meant to be a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Since the Clean Neighbourhoods and Environment Act 2005 was made in England and Wales, the Department has received ongoing enquiries from MLAs, MPs, district councils, Tidy Northern Ireland, the NI Local Government Association, the Chief Environmental Health Officers' Group and other interests calling for the introduction of similar legislation in Northern Ireland. Up until now, however, the Department has been unable to respond positively to these representations because its limited policy and legislation development resources have had to be allocated to other higher priorities.
4. The objective of the Act is to improve the quality of the local environment by giving district councils additional powers to deal with litter, nuisance alleys, graffiti and fly posting, abandoned and nuisance vehicles, dogs, noise and statutory nuisance.
5. The Act will be supported with a significant and comprehensive programme of subordinate legislation and guidance all of which will be subject to further detailed consultation exercises.
6. Part 1 of the Act makes provision for Gating Orders, Part 2 makes provision for Vehicles, Part 3 makes provision for Litter, Part 4 makes provision for Graffiti and Other Defacement; Part 5 makes provision for Dogs, Part 6 makes provision for Noise, Part 7 makes provision for Statutory Nuisances and Part 8 contains miscellaneous and supplementary provisions.

CONSULTATION

7. In excess of 140 individuals and organisations were consulted on the proposals, including political parties, the Environment Committee, MLAs, district councils and community and voluntary organisations. In addition advertisements publicising the consultation exercise were placed in the local press and full details of the consultation exercise were also available on the Department of the Environment's website.

OVERVIEW

8. The Act has 79 sections and 4 Schedules and is divided into 8 distinct Parts.

COMMENTARY ON SECTIONS

Comments are not given where the wording is self explanatory.

PART 1 - GATING ORDERS

Section 1 – Gating orders

This section inserts a new Part in the Roads (Northern Ireland) Order 1993 to provide district councils with the power to make a gating order to restrict public access to a road over which the public would normally have a right of passage. A gating order may be made in respect of a road which is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affects local residents or businesses. District councils will be required to publicise their intention to make a gating order and to obtain the approval of the Department for Regional Development prior to making the order.

PART 2 - VEHICLES

Section 2 – Exposing vehicles for sale on a road

This section makes it an offence for a person to park motor vehicles on a road or roads, where the vehicles are parked merely in order to be sold. There must be two or more vehicles within 500 metres of each other for the offence to be committed. A person will not be convicted of an offence if he can prove that he was not acting for the purposes of a business.

Section 3 – Repairing vehicles on a road

This section makes it an offence to carry out "restricted works" to vehicles on a road. "Restricted works" means:

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

These notes refer to the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c.23) which received Royal Assent on 4 May 2011

A person will not be convicted of an offence if he proves that the works were not carried out in the course of a business or for gain or reward. However, this defence is only available where the works did not give “reasonable cause for annoyance” to persons in the vicinity. A person will also not be convicted of an offence where the repairs arose from a breakdown or accident and were carried out promptly or were otherwise authorised.

Section 4 – Power to give fixed penalty notices

Subsection (1) of this section enables an employee of a district council who is authorised by the council to issue a fixed penalty notice for the offences of exposing vehicles for sale or repairing a vehicle on the road, offering the offender an opportunity to discharge any liability for the offence. Subsection (8) fixes the amount of the penalty at £100 which can be amended by order under subsection (9). Under subsection (10) the district council to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

Section 5 – Power to require name and address

Subsection (1) of this section provides an authorised officer of a district council with the power to require the name and address of an offender if the officer proposes to give him a penalty notice. Subsection (2) makes it an offence to fail to provide the information asked for or to give inaccurate information.

Section 6 – Use of fixed penalty receipts

This section enables district councils to use the receipts from fixed penalty notices issued pursuant to section 4 for the purposes of specified functions.

Section 7 – Offence of abandoning a vehicle: fixed penalty notices

This section amends the Pollution Control and Local Government (Northern Ireland) Order 1978 (the 1978 Order) (which makes it an offence to abandon a motor vehicle) by inserting new Articles 29A to 29C. New Article 29A of the Order gives an authorised officer of a district council the power to issue a fixed penalty notice in respect of an offence of abandoning a vehicle, offering the offender the opportunity to discharge any liability for the offence. The sum is set at £200 by paragraph (8) which can be amended by order as set out in paragraph (9). Under paragraph (10) the district council to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

New Article 29B enables an authorised officer of a district council to require the name and address of the person to whom he proposes to issue a fixed penalty notice. A person commits an offence if he fails to provide the information required or gives false or inaccurate details.

New Article 29C enables district councils to use the receipts from these penalties for the purposes of specified functions.

Section 8 – Notice of removal of vehicle by district council

This section amends Article 30 of the 1978 Order by removing the requirement to serve a notice on the occupier of land where a vehicle that appears to be abandoned is on a ‘road’. This enables vehicles to be removed immediately from any road to which the public has access.

Subsection (3) removes the requirement for a district council to affix a notice to an abandoned vehicle prior to removal where it is considered to be in such a condition that it ought to be destroyed.

Section 9 – Disposal of removed vehicle by district council

This section relates to the steps a district council must take before it can dispose of an abandoned vehicle. It amends Article 31 of the 1978 Order by removing the requirement to wait for the expiration of a valid licence. This has the effect of allowing any vehicle that is only fit for destruction to be destroyed immediately. In other cases, if the owner either cannot be traced or fails to respond to a notice the vehicle can then be disposed of.

This section also amends Article 31 by allowing immediate disposal where neither a registration mark (plate) is shown nor current licence displayed. Without that information, it is considered unreasonable to expect the council to trace the owner. This section allows these vehicles to be disposed of immediately.

Section 10 - Guidance

This section obliges councils to have regard to guidance given by the Department when exercising their functions in relation to the removal and disposal of vehicles.

Section 11 – Notice of removal of vehicle

This section amends Articles 48 and 49 of the Road Traffic Regulation (Northern Ireland) Order 1997 (the 1997 Order) to remove the requirement to attach a notice on a vehicle that is considered in such a condition that it ought to be destroyed. The 1997 Order has similar provisions for dealing with abandoned vehicles as are contained in the 1978 Order but provides a power for constables and the Department for Regional Development to act, rather than the duty imposed on district councils under Article 30 of the 1978 Order.

Section 12 – Disposal of vehicle by police officer. Section 13 – Disposal of vehicle by Department

These sections amend Articles 51 and 52 of the 1997 Order to make various amendments that mirror the amendments made by section 9. It allows for the disposal of vehicles that do not display either a valid licence or a registration mark (plate) and also removes the requirement to wait for the expiration of a valid licence before the vehicle can be disposed of. There are also amendments to allow the period of time before a vehicle can be disposed of to be reduced by regulations.

PART 3 - LITTER

Section 14 – Offence of dropping litter in lake, pond or watercourse

This section amends the offence of dropping litter in the Litter (Northern Ireland) Order 1994 (the Litter Order) in relation to a lake, pond or watercourse. Article 3 of the Litter Order describes what constitutes the offence of leaving litter and under what circumstances leaving litter is not an offence. Article 3(2) of the Litter Order provides that it shall be a defence for a person charged with an offence of leaving litter to prove that the disposal was authorised by law or done with the consent of the owner or other person or authority having control over the place in which the item of litter was deposited. This section inserts a new paragraph (2A) into Article 3 to provide that consent may only be given in relation to a lake, pond or watercourse if the same person owns all the surrounding land.

Section 15 – Penalty for failing to provide name

This section amends the Litter Order to also make it an offence to give a false or inaccurate name and address. This section also increases the maximum level of fine on summary conviction for these offences to level 3 (£1000).

Section 16 – Litter offence: fixed penalty notice

This section amends Article 6 of the Litter Order (fixed penalty notices). Subsection (2) amends Article 6 to enable a district council to specify the amount of fixed penalty to be applied in its district; where the council sets no such amount the fixed penalty shall be £75. Powers set out in Article 18A (introduced by section 22) of the Litter Order enable the Department to make regulations to set a minimum and maximum range within which the fixed penalty amount can be set. The district council to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

Subsection (3) provides that in determining whether to give a person a fixed penalty under Article 6 of the Litter Order an authorised officer must have regard to a code of practice issued by the Department as for the time being in force.

Subsection (4) inserts a definition of an “authorised officer” which allows district councils to authorise individuals other than their own employees to issue fixed penalty notices on their behalf.

Section 17 – Litter clearing notices

This section repeals the power to designate litter control areas (and Schedule 4 repeals provisions of the Litter Order which are consequential on that power). As an alternative, the section inserts a new Article 12A into the Litter Order empowering district councils to serve “litter clearing notices” on particular occupiers where they are of the view that defacement caused by the litter is detrimental to the amenity of the area. It also inserts new Articles 12B and 12C into the Litter Order. Article 12B provides a person who has been served a litter clearing notice with the right of appeal to a court of summary jurisdiction and sets out the grounds on which the appeal may be made. Article 12C makes it an offence to fail without

reasonable excuse to comply with a litter clearing notice. Where a person fails to meet the requirement of a notice, a district council may itself enter the land to remove the litter. A council may impose a reasonable charge for this on the person who failed to comply with the notice.

Section 18 – Street litter control notices

This section extends the application of street litter control notices under Article 13 of the Litter Order to cover also vehicles, stalls and other moveable structures used for street vending, so that mobile vendors can also be required to take steps to minimise and clear up litter on any street or open land adjacent to it that originates from their commercial or retail activities.

Section 19 – Street litter: supplementary provisions

This section amends the Litter Order to make it an immediate offence not to comply with the requirements of a street litter control notice, thus dispensing with the requirement on the council first to seek an order from a court of summary jurisdiction ordering compliance. Article 14(4)(b) of the Litter Order relating to the requirements which may be imposed by a notice has been extended to include the standards to which any such thing must be done.

Section 20 – Failure to comply with notice: fixed penalty notices

This section inserts Article 14A into the Litter Order to enable an authorised officer of the district council to issue a notice to a person who he has reason to believe has not complied with a litter clearing notice or a street litter control notice, offering that person an opportunity to discharge any liability to conviction for an offence by payment of a fixed penalty. The use of receipts from these fixed penalty notices is dealt with under section 72.

Section 21 – Controls on free distribution of printed matter

This section inserts Article 14B and Schedule 1A into the Litter Order. This gives district councils the power to control the distribution of free literature to prevent such material from becoming litter in the local environment. The restrictions in this Article are subject to exceptions in the case of charity, religious and political material.

Paragraph 1 of Schedule 1A makes it an offence to distribute, commission or pay for the distribution of free literature without consent in a designated area. Material distributed for charitable, religious and political purposes is exempted from the offence. The offence does not extend to putting literature inside a building or letter-box, nor does it apply where the distribution takes place entirely within a public service vehicle, such as a bus or coach.

Paragraph 2 enables a council to make an order to designate areas where this offence will apply. It sets out the procedure and requirements for achieving designation, including public notification, consideration of objections and timing of designation.

Paragraph 3 enables a council to issue consents for the distribution of free literature in a designated area. This includes provisions allowing a council to impose conditions on the consent to prevent defacement and ensure enforcement, to refuse consent in certain circumstances, and to revoke consent. The consent may also specify that others can also

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distribute the material in accordance with that consent, for example, a distributor, an individual or the employees of the applicant.

Paragraph 4 enables a council to charge a fee, within the confines of overall cost recovery for this Schedule.

Paragraph 5 provides for appeal to a court of summary jurisdiction.

Paragraph 6 enables an authorised officer of a district council to seize the material when an offence is committed. A person claiming ownership of the literature may apply to a court of summary jurisdiction requesting the return of this material.

Paragraph 7 enables a council, or any person authorised by a council, to issue a fixed penalty notice for this offence, offering the offender an opportunity to discharge any liability to the offence.

Section 22 – Fixed penalty notices: supplementary

This section introduces a new Article 18A into the Litter Order, relating to the fixed penalty notices associated with the offence of dropping litter, litter clearing notices, street litter control notices and the distribution of printed matter. It enables the Department to make regulations which may set a range within which a locally determined fixed penalty amount must fall. Such regulations may also restrict the extent to which and the circumstances in which a council may permit the payment of lesser amounts. Article 18A also enables the Department, by order, to change the amount of the fixed penalty where no local rate is set by the council.

Section 23 – Exclusion of liability

This section amends the Litter Order by introducing new Article 18B which protects a district council and any other person described in Article 18B(2) against liability to an occupier or owner of land for damages or otherwise arising out of the exercise of certain powers relating to entry on to land (as specified in the Article) in the context of either a litter clearing notice or a litter abatement notice. The circumstances in which this exclusion does not apply are also set out (bad faith, lack of due care, etc.).

Section 24 – Abandoned shopping and luggage trolleys

This section amends Schedule 1 to the Litter Order so as to enable a district council to charge the person believed to be the owner of an abandoned shopping or luggage trolley for its removal, storage and disposal. The charge is payable to the council on demand and is recoverable by the council as a debt due to it.

Section 25 – Section 24: transitional provisions

This section sets out transitional provisions relating to section 24.

PART 4 – GRAFFITI AND OTHER DEFACEMENT

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

Section 26 – Penalty notices for graffiti and fly-posting

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

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

Section 27 – Amount of penalty

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

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

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

Section 29 – Penalty receipts

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

Section 30 - Guidance

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

Section 31 – Defacement removal notices

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

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

Section 32 – Recovery of expenditure

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

Section 33 - Guidance

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

Section 34 - Appeals

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

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

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

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

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

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

Section 37 – Sale of aerosol paint to children

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

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

Section 38 – Unlawful display of advertisements

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

Section 39 – Power of district councils to obtain information

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

PART 5 - DOGS

Section 40 – Power to make dog control orders

This section enables district councils to make orders that apply offences aimed at the control of dogs (“dog control orders”) to specified land in their area. Subsection (3) sets out the four categories of offence that can be provided for. The effect of subsection (4) is that the scope of offences that can be provided for in dog control orders will be set out in regulations.

Section 41 – Dog control orders: supplementary

This section requires the Department to make regulations which set out: the maximum penalties for dog offences; the content and format of dog control orders; and the process to be undertaken by district councils before and after making such orders (including requirements in respect of consultation on, and publication of, such orders).

Section 42 – Land to which this Part applies

This section provides that dog control orders may apply to all land to which the public is allowed access and which is open to the air. Subsection (3) allows for exclusions, by order, to the types of land that can be subject to dog control orders. Land which is the subject of a private Act may also be excluded.

Section 43 – Fixed penalty notices for contravention of dog control order

This section allows authorised officers of district councils, or an authorised person working on their behalf, to issue a fixed penalty notice offering members of the public an opportunity to discharge any liability for offences under a dog control order.

Section 44 – Amount of fixed penalties

This section enables a district council to specify the amount of a fixed penalty in relation to their own dog control orders. Councils will also be able to allow for the payment of a lesser amount if the fine is paid within a specified time period. Where no amount is specified at the local level, the fixed penalty is set at £75. Subsections (4) to (6) also provide the Department with the power to make regulations relating to the fixed penalty – in particular, to prescribe a range within which penalties fixed at the local level must fall; the Department may also (by order) substitute the figure of £75 referred to above with a new amount.

Section 45 – Power to require name and address

Section 45 provides an authorised officer of a district council with the power to require the name and address of a person if the officer proposes to give that person a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

Section 46 - Byelaws

This section removes the ability of district councils to make byelaws to control dogs in circumstances where it would also be possible for the council to make a dog control order in respect of the same matter in relation to the land in question. Existing byelaws will remain in place unless that land is made the subject of a dog control order for the same type of offence. For example, if a district council has a byelaw in place banning dogs from a local park, that byelaw will continue to have effect until such time as the council makes a dog control order in relation to that park that likewise bans dogs.

Section 47 – Power of district councils to obtain information

This section enables a district council to serve a notice on any person requiring that person to supply any information which the council reasonably considers it needs for the purposes of any of its functions under Part 5. Subsection (2) provides that Regulations may restrict the information that may be required and determine the form in which it is to be required. Subsection (3) makes it an offence to fail to comply with the requirements of a notice requesting information or to supply false information.

PART 6 – NOISE

CHAPTER 1: AUDIBLE INTRUDER ALARMS

Section 48 – Designation of alarm notification areas

This section sets out the steps that must be followed by a council wishing to designate an area as an alarm notification area.

Section 49 – Withdrawal of designation

This section enables a district council to withdraw a designation made under section 48 and sets out the steps for doing so.

Section 50 – Notification of nominated key-holders

This section requires that the responsible person in respect of premises with an audible intruder alarm within an alarm notification area must nominate a key-holder for the premises and then notify the district council of that key-holder's name, address and telephone number. Subsection (4) makes it an offence for the responsible person to fail either to nominate or to notify within the specified time period.

Section 51 – Nomination of key-holders

This section (subsections (3) to (5)) describes who is eligible to be nominated as a key-holder. Subsection (6) provides that where a key-holder ceases to satisfy certain requirements, the responsible person must nominate a replacement. The responsible person would then, under section 50, have to notify the details of the new key-holder to the council. Again, failure either to nominate or notify would be an offence.

Section 52 – Offences under section 50: fixed penalty notices

This section (subsections (1) and (2)) enables an “authorised officer” of a district council to issue a fixed penalty notice where it appears to that officer that an offence of failing to nominate or notify details of a key-holder has been committed, offering the offender an opportunity to discharge, by payment of a fixed penalty (within 14 days), any liability to conviction for the offence. Who qualifies as an authorised officer is described in subsection (10). The rest of the section sets out the effects of the fixed penalty notice, what information such a notice should contain, and procedures for payment.

Section 53 – Amount of fixed penalty

This section (subsections (2) and (3)) enables district councils to specify the amount of a fixed penalty for an offence committed in their district. Where no amount is set by the council, the penalty amount will be £75. In either case, a district council may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify. Subsections (4) and (5) give power to the Department to make regulations governing the power of district council to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent and circumstances in respect of which a council may provide for reduced early payment). Under subsection (6) the Department may (by order) substitute the figure of £75 referred to above with a new amount.

Section 54 – Use of fixed penalty receipts

This section allows a district council to retain the receipts arising from fixed penalty notices issued pursuant to section 52, and specifies the functions for which the receipts may be used.

Section 55 – Fixed penalty notices: power to require name and address

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

Section 56 – Powers of entry

This section (subsections (3) and (4)) provides an authorised officer of a district council with a power of entry (but not by force) in order to silence an intruder alarm in or on premises in the council’s district where the officer is satisfied that the conditions described in subsection (2) are met.

Section 57 – Warrant to enter premises by force

This section provides that an authorised officer may enter premises using reasonable force if necessary to silence an alarm following the issue of a warrant by a lay magistrate.

Section 58 – Powers of entry: supplementary

This section makes supplementary provision where an officer of a district council enters any premises to silence an alarm either under section 56 or under a warrant issued under section 57. This includes provision allowing an officer to take other persons with him or her to the premises (subsection (3)), requiring the officer (if the premises are unoccupied or the occupier is temporarily absent) to leave a notice at the premises stating what action has been taken and securing the premises (subsection (5)), allowing a district council to recover expenses reasonably incurred by it in connection with entering the premises and silencing the alarm (subsection (7)) and ensuring that action taken in good faith by the council under these powers does not subject it to any liability (subsection (9)). Subsection (10) provides that 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.

Section 59 – Interpretation of this Chapter

This section relates to the interpretation of Chapter 1 of Part 6 of the Act.

CHAPTER 2: AMENDMENTS TO THE NOISE ACT 1996

Section 60 – Dealing with noise at night

This section amends the Noise Act 1996, which currently gives powers to district councils to deal with noise at night (by way of warning notices, fixed penalties etc.). These powers have previously only applied to a district council in Northern Ireland that adopts them in its district. Subsection (2) confers these powers on all councils. Subsection (3) removes the previously associated duty (once the powers had been adopted) to take reasonable steps to investigate a complaint, and substitutes a discretionary power to take such steps in response to a complaint. Subsection (4) removes a provision that would have applied to a situation where one district council had adopted powers under the Act but a neighbouring council had not, as this will no longer apply.

Section 61 – Noise offences: fixed penalty notices

This section makes various amendments to the provisions in the Noise Act 1996 relating to fixed penalties. The Noise Act 1996, in its application to Northern Ireland, currently permits a district council to deal with noise exceeding permitted levels only from dwellings at night-time. An authorised officer of a district council can, under section 8 of that Act, give a person who the officer believes has committed an offence under the Act a fixed penalty notice, offering that person the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.

Subsection (2) introduces new sections 8A and 8B to the Noise Act 1996. Under the new section 8A(2)(a) a district council will be able to set the level of the fixed penalty (in lieu of liability to conviction for an offence) in its district. The fixed penalty is set at £100 where no amount is specified by a district council (which is the amount of the penalty under the current regime). In either case, a district council may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify. Section 8A(3) provides that where the alleged offence relates to licensed premises, the amount of the fixed penalty will be fixed at £500 (with no power for a district council to set an alternative). New sections 8A(5) and (6) give powers to the Department to make regulations governing the power of district councils to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent and circumstances in respect of which a district council may provide for reduced early payment). The new section 8B provides an authorised officer of a district council with the power to require the name and address of a person if the officer proposes to give that person a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

Subsection (3) amends section 9 of the Noise Act 1996 and specifies the qualifying functions for which a district council can use the receipts from fixed penalty notices. The new section 9(4B) to (4F) makes further provision regarding the use of fixed penalty receipts and includes a power for the Department to make regulations about how district councils can use their fixed penalty receipts.

Section 62 – Extension of Noise Act 1996 to licensed premises etc.

This section and Schedule 1 extend the powers under the Noise Act 1996 for a district council to take action to deal with noise at night (formerly restricted to noise from dwellings) to premises as specified in paragraph 3(2) of the said Schedule 1.

PART 7 – STATUTORY NUISANCES

Section 63 – Statutory nuisances

This section sets out a definitive list of statutory nuisances. It also updates and clarifies the definitions of statutory nuisances in a number of minor respects.

Section 64 – Duty of district council to inspect for statutory nuisance

This section re-enacts the existing duty on councils to inspect their district from time to time to detect any statutory nuisance that ought to be dealt with under sections 65 or 66, and to take such steps as are reasonably practicable to investigate a complaint about a statutory nuisance.

Section 65 – Summary proceedings for statutory nuisances

This section streamlines the procedures for nuisance abatement action by district councils. It replaces the present two-stage procedure by a simpler procedure based upon the noise abatement provisions of the Pollution Control and Local Government (Northern Ireland) Order 1978. It gives district councils a new power to serve an abatement notice in anticipation of a statutory nuisance occurring. It gives councils power to serve a notice to

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abate existing nuisance or to prohibit commission of future nuisance. It provides for: a mechanism to appeal against the notice; offences if the notice is contravened; defences for the offence of contravening the notice.

Section 66 – Abatement notice in respect of noise in the street

This section stipulates the procedure to be followed by district councils in serving an abatement notice with regard to noise in the street. This section further provides for offences for removing or interfering with a notice fixed to a vehicle, machinery or equipment.

Section 67 – Supplementary provisions

This section provides that 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. In particular, this section provides that where an abatement notice has not been complied with, a district council may abate the nuisance and do whatever may be necessary in execution of the notice. This section further provides that if a council is of the opinion that proceedings for an offence in a court of summary jurisdiction would afford inadequate remedy in the case of any statutory nuisance, it may take proceedings in the High Court for specified purposes notwithstanding the council has suffered no damage from the nuisance.

Section 68 – Expenses recoverable from owner to be a charge on premises

This section enables district councils, in certain circumstances, to charge premises with expenses reasonably incurred in abating a statutory nuisance. The section also provides that the expenses and interest are a charge on the property until they are paid off and makes provision for appeal to the county court against the notice making the expenses a charge.

Section 69 – Payment of expenses by instalments

This section provides for the payment of expense by instalments where any expenses are a charge on premises under section 68. The section also permits the sum charged to be taken by the council from the rent of any tenant.

Section 70 – Summary proceedings by persons aggrieved by statutory nuisances

This section provides a right for a private individual who is aggrieved by the existence of a statutory nuisance to apply to the court of summary jurisdiction for a nuisance abatement order. The provision: allows a court of summary jurisdiction to impose a fine on the individual causing the nuisance in addition to the order abating the nuisance; allows the court to prevent habitation of a house where the house is not fit; sets out notice requirements which must be followed prior to applying to the court; creates an offence of failing to comply with an abatement order made by the court and provides defences to such an offence. The section also: allows a court of summary jurisdiction to direct a district council to do anything which a person convicted of such an offence was required to do by an order to which the conviction relates; requires a court of summary jurisdiction to order a defendant, in a case where it is proved that an alleged nuisance existed at the date of the making of the complaint, to pay the person bringing the proceedings an amount to compensate that person for any expenses properly incurred by that person in the proceedings.

These notes refer to the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c.23) which received Royal Assent on 4 May 2011

Section 71 – Application of this Part to the Crown

This section provides for Part 7 of this Act to bind the Crown.

PART 8 – MISCELLANEOUS AND SUPPLEMENTARY

Section 72 – Use of penalty receipts

This section enables district councils to use for certain functions the money received from any fixed penalty notices they issue in respect of certain offences relating to litter, fly-posting, graffiti and dog control offences. The section also makes ancillary provision for the Department to regulate the issue of penalty receipts.

Section 73 – Offences relating to pollution etc.: penalties on conviction

This section increases from £30,000 to £50,000, the maximum fine on summary conviction that may be provided for in Regulations made under pollution prevention and control provisions in the Environment (Northern Ireland) Order 2002. This will enable the maximum fines on summary conviction in the Pollution Prevention and Control Regulations (Northern Ireland) 2003 concerning, for example, contravention of the requirement for a permit to operate an installation or mobile plant, failure to comply with or to contravene a condition of a permit and failure to comply with the requirements of an enforcement notice or a suspension notice, to be brought into line with the equivalent maximum fines in respect of illegal waste activity set out in the Waste and Contaminated Land (Northern Ireland) Order 1997 in order to ensure consistency in this area of regulation. The increase to £50,000 also brings the level of fine into line with that which applies in England and Wales.

Section 74 – Offences by bodies corporate

This section 74 modifies section 20(2) of the Interpretation Act (Northern Ireland) 1954 concerning offences by bodies corporate for the purposes of its application to this Act. The effect of this section is that it makes a company director and those that have control over a company guilty of an offence under this Act if it can be proved that the offence was committed with their consent or connivance, or could be attributed to their neglect.

Section 75 – Regulations and orders

This section provides that regulations and orders made by the Department may include such additional provisions as the Department considers necessary. Section 75 also specifies the orders and regulations which shall be subject to negative resolution and draft affirmative resolution.

Section 76 - Interpretation

This section contains interpretation provisions.

Section 77 – Minor and consequential amendments and repeals

This section provides for the amendments and repeals set out in Schedules 3 and 4 to have effect.

These notes refer to the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c.23) which received Royal Assent on 4 May 2011

Section 78 - Commencement

This section concerns the commencement of the Act and enables the Department to make Commencement Orders.

Section 79 – Short title

This section provides a short title for the Act.

Schedule 1 – Application of the Noise Act 1996 to licensed premises etc.

This Schedule makes various amendments to the Noise Act 1996 so as to extend its application to licensed premises (including premises subject to an occasional licence), registered clubs and premises subject to an exhibition licence, entertainments licence and to premises where meals or refreshments are supplied.

Schedule 2 – Statutory nuisances: supplementary provisions

This Schedule provides supplementary provisions in connection with Part 7 (Statutory Nuisances) of the Act concerning appeals to a court of summary jurisdiction, powers of entry etc., offences relating to entry, default powers, protection from personal liability and statement of right of appeal in notices.

Schedule 3 – Minor and consequential amendments

This Schedule lists the minor and consequential amendments necessary in the Act.

Schedule 4 - Repeals

This Schedule lists the repeals brought in by the Act.

HANSARD REPORTS

9. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly

<i>STAGE</i>	<i>DATE</i>
Introduction of the Act to the Committee for the Environment	11 February 2010
Introduction to the Assembly	22 June 2010
Second Stage debate	30 June 2010
Committee Stage – Departmental Briefing/ Assembly Research briefing	30 September 2010
Committee Stage – evidence from Pubs of Ulster	7 October 2010
Committee Stage – evidence from Northern Ireland Local Government Association, Northern Ireland Environmental Quality Forum, Children and youth groups	4 November 2010
Committee Stage – evidence from Countryside Alliance/Kennel Club and Mr Tom Ekin	11 November 2010
Committee Stage – informal consideration of sections 2 to 15	25 November 2010
Committee Stage – informal consideration of Parts 1, 3 and 5	2 December 2010

These notes refer to the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c.23) which received Royal Assent on 4 May 2011

STAGE	DATE
Committee Stage – informal consideration of Parts 4, 5, 6, 7, 8 and Schedules	9 December 2010
Committee Stage – formal consideration of Parts 1, 2 and 3	16 December 2010
Committee Stage – formal consideration of Parts 4 to 8 and Schedules	13 January 2011
Committee Stage – further consideration of section 16	26 January 2011
Committee’s report on the Act – Report number 08/10/11R	27 January 2011
Consideration Stage in the Assembly	21 February 2011
Further Consideration Stage	1 March 2011
Final Stage	14 March 2011
Royal Assent	4 May 2011

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