



## 2014 CHAPTER 4

### *Enforcement powers, etc.*

#### **Powers of entry**

**11.—**(1) An authorised officer has the right, on producing, if so required, the officer's authorisation—

- (a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which the officer reasonably believes it is necessary to enter for the purpose of ascertaining whether any of the following offences is being or has been committed on the premises and, if so, by whom—
  - (i) an offence under section 10;
  - (ii) an offence under Article 3, 4 or 4A of the Health and Personal Social Services (Northern Ireland) Order 1978;
  - (iii) an offence under Article 4, 4A or 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991;
- (b) to carry out on those premises such inspections and examinations as the officer reasonably believes are necessary for that purpose;
- (c) if the officer reasonably believes it is necessary for that purpose—
  - (i) to require the production of any book, document, data, record (in whatever form it is held) or product; and
  - (ii) to inspect it and take copies of or extracts from it;
- (d) to take possession of any book, document, data, record (in whatever form it is held) or product which is on the premises and retain it for as long as the authorised officer reasonably believes is necessary for that purpose;

(e) to require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer reasonably believes is necessary for that purpose.

(2) A person is not required under subsection (1) to answer any question or to produce any item mentioned in subsection (1)(c)(i) which the person would be entitled to refuse to answer or produce in or for the purpose of proceedings in a court in Northern Ireland.

(3) An authorised officer may make such purchases and secure the provision of such services as the authorised officer reasonably believes are necessary for the purpose mentioned in subsection (1)(a).

(4) A lay magistrate may exercise the power in subsection (6) if he or she is satisfied on a complaint in writing substantiated on oath—

(a) that for the purpose mentioned in subsection (1)(a) there are reasonable grounds for entry into any premises, other than premises used only as a private dwelling house; and

(b) of either or both of the matters mentioned in subsection (5).

(5) The matters are—

(a) that admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant under this section has been given to the occupier;

(b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his or her return.

(6) The lay magistrate may by warrant signed by him or her authorise an authorised officer to enter the premises, if need be by force.

(7) The warrant under subsection (6) shall continue in force until the end of the period of one month beginning with the date on which the magistrate signs it.

(8) An authorised officer entering any premises under this section may take with the officer such other persons and such equipment as the officer reasonably believes are necessary.

(9) If premises which an authorised officer is authorised to enter under this section are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as the officer found them.

### **Fixed penalties for certain offences**

**12.—**(1) Where an authorised officer of a council has reason to believe that a person has committed—

(a) an offence under section 10(1), (2), (3), (7) or (8),

(b) an offence under Article 3, 4 or 4A of the Health and Personal Social Services (Northern Ireland) Order 1978,

(c) an offence under Article 4, 4A or 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991,

the officer may give that person a fixed penalty notice in respect of the offence.

(2) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this section.

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

—

(a) no proceedings may be brought for that offence before the expiration of the period of 28 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.

(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 about the offence.

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

(a) the period during which, by virtue of subsection (3)(a), proceedings will not be brought for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which—

(i) the fixed penalty may be paid;

(ii) any representations relating to the notice may be made.

(6) The person mentioned in subsection (5)(c) must be the council on whose behalf the authorised officer was acting when he or she gave the notice.

(7) The form of a notice under this section shall be such as may be prescribed.

(8) The fixed penalty payable to a council under this section shall be such amount as may be prescribed.

(9) But if payment is made within the first 14 days of the period mentioned in subsection (3)(a) the amount payable is reduced by 25%.

(10) 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)(i) at the address so mentioned.

(11) Where a letter is sent in accordance with subsection (10) 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.

(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.

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

**13.—**(1) A council may use any sums it receives in respect of fixed penalties payable in pursuance of notices given under section 12 (its “fixed penalty receipts”) only for the purposes of—

- (a) its functions under this Act; or
- (b) such other functions (if any) as are prescribed.

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

(3) Regulations may—

- (a) make provision for what a council is to do with its fixed penalty receipts—
  - (i) pending their being used for the purposes mentioned in subsection (1);
  - (ii) if they are not so used before such time after their receipt as may be specified in the regulations;
- (b) make provision for accounting arrangements in respect of a council’s fixed penalty receipts.

(4) The provision that may be made under subsection (3)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.

(5) Before making regulations under this section the Department shall consult

- (a) councils; and
- (b) such other persons or bodies as the Department considers appropriate.

### **Withdrawal of fixed penalty notices**

**14.—**(1) This section applies if a council considers that a penalty notice which an authorised officer acting on its behalf has given to a person under section 12 ought not to have been given.

(2) The council may give notice to that person withdrawing the penalty notice.

(3) If it does so—

- (a) it must repay to that person any amount which has been paid by way of penalty in pursuance of the penalty notice; and

(b) no proceedings may be brought or continued against that person for the offence in question.

(4) The council must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

### **Obstruction, etc. of authorised officers**

**15.—**(1) A person who—

- (a) intentionally obstructs an authorised officer who is acting in the proper exercise of the officer’s functions under this Act, or
- (b) without reasonable cause fails to comply with any requirement made of the person by such an officer who is so acting,

commits an offence.

(2) A person who, in giving any information which is properly required of the person by an authorised officer, makes a statement which is false in a material particular commits an offence.

(3) A person does not commit an offence under subsection (2) if—

- (a) the person did not know the material particular was false; and
- (b) the person had reasonable grounds to believe that it was true.

(4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Council's duty to share information about enforcement**

**16.—**(1) Every council must make available to every other council, the registration authority and the Department such information relating to—

- (a) fixed penalty notices given in respect of tobacco offences committed in the district of that council,
- (b) convictions in respect of tobacco offences committed in the district of that council, and
- (c) restricted premises orders and restricted sale orders made on an application by that council,

as the other council, the registration authority or, as the case may be, the Department may require.

(2) Information made available under subsection (1) to a council or the registration authority may be used by the council or the registration authority only for the purpose of enabling it or assisting it to perform its functions under this Act.

(3) In this section “tobacco offence” has the meaning given in section 5(14).

**Offences by bodies corporate**

17. For the purposes of this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954 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.