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STATUTORY INSTRUMENTS

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**1978 No. 1049**

**Pollution Control and Local Government  
(Northern Ireland) Order 1978**

**PART VI**

**MISCELLANEOUS AND GENERAL**

Miscellaneous functions of district councils

**Defective premises**

**65.**—(1) If it appears to a district council that—

- (a) any premises are in such a state (in this Article referred to as a “defective state”) as to be prejudicial to health or a nuisance, and
- (b) unreasonable delay in remedying the defective state would be occasioned by following the procedure prescribed by [<sup>F1</sup>Part 7 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011] ,

the district council may serve on the person on whom it would have been appropriate to serve an abatement notice under [<sup>F2</sup>section 65 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 ] (if the district council had proceeded under that section) a notice stating that the council intend to remedy the defective state and specifying the defects which it intends to remedy.

(2) Subject to paragraph (3), the district council may, after the expiration of nine days after service of a notice under paragraph (1), execute such works as may be necessary to remedy the defective state and may recover the expenses reasonably incurred in so doing from the person on whom the notice was served.

(3) If, within seven days after service of a notice under paragraph (1) the person on whom the notice was served serves a counter-notice that he intends to remedy the defects specified in the first-mentioned notice, the district council shall take no action under the first-mentioned notice unless the person who served the counter-notice either—

- (a) fails within what seems to the district council a reasonable time to begin to execute works to remedy the said defects, or
- (b) having begun to execute such works fails to make such progress towards their completion as seems to the district council reasonable.

(4) In proceedings to recover expenses under this Article the court—

- (a) shall inquire whether the district council were justified in concluding that the premises were in a defective state, or that unreasonable delay in remedying the defective state would have been occasioned by following the procedure prescribed by [<sup>F3</sup>Part 7 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011] , and
- (b) if the defendant proves that he served a counter-notice under paragraph (3), shall inquire whether the defendant failed to begin the works to remedy the defects within a reasonable time, or failed to make reasonable progress towards their completion,

and if the court determines—

- (i) that the district council was not justified in either of the conclusions mentioned in sub-paragraph (a), or
- (ii) that there was no failure under sub-paragraph (b),

the district council shall not recover the expenses or any part of them.

(5) Subject to paragraph (4), in proceedings to recover expenses under this Article the court may inquire whether the said expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings, and the court may make such order concerning the expenses or their apportionment as appears to the court to be just; so, however, that the court shall not order the expenses or any part of them to be borne by any person other than the defendant in the proceedings unless the court is satisfied that that other person has had due notice of the proceedings and an opportunity of being heard.

(6) A district council shall not serve a notice under this Article, or proceed with the execution of works in accordance with a notice so served, in respect of any building which is a listed building within the meaning of [<sup>F4</sup>the Planning Act (Northern Ireland) 2011] .

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| <b>F1</b> | Words in art. 65(1) substituted (1.4.2012) by <a href="#">Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c. 23), s. 78, Sch. 3 para. 9(4)(a)(i)</a> ; S.R. 2012/13, art. 2(2), Sch. 2  |
| <b>F2</b> | Words in art. 65(1) substituted (1.4.2012) by <a href="#">Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c. 23), s. 78, Sch. 3 para. 9(4)(a)(ii)</a> ; S.R. 2012/13, art. 2(2), Sch. 2   |
| <b>F3</b> | Words in art. 65(4) substituted (1.4.2012) by <a href="#">Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c. 23), s. 78, Sch. 3 para. 9(4)(b)</a> ; S.R. 2012/13, art. 2(2), Sch. 2   |
| <b>F4</b> | Words in art. 65(6) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by <a href="#">Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), Sch. 6 para. 19</a> (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2 (as amended (16.3.2016) by S.R. 2016/159, art. 2)) |

**Changes to legislation:**

There are currently no known outstanding effects for the Pollution Control and Local Government (Northern Ireland) Order 1978, Section 65.