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STATUTORY INSTRUMENTS

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**1978 No. 1049 (N.I. 19)**

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

- - - - - [25th July 1978]

**PART I  
INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Pollution Control and Local Government (Northern Ireland) Order 1978.

(2) <sup>F1</sup> This Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F2</sup>.

**Annotations:**

- F1** Commencement orders made to 31.3.1981: SR 1978/348; 1980/97; 1981/85  
**F2** partly exercised by SR 1992/253

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

<sup>F3</sup>“the Alkali Act” means the Alkali, &c. Works Regulation Act 1906 ;

“the Department” means the Department of the Environment;

“government department” includes a department of the Government of the United Kingdom;

[<sup>F4</sup>“the Industrial Pollution Control Order ” means the Industrial Pollution Control (Northern Ireland) Order 1997;]

“mine” has the same meaning as in the Mines Act (Northern Ireland) 1969 ;

“modify” means making additions, omissions, amendments, applications, extensions, restrictions and substitutions;

“notice” means notice in writing;

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“orders”, except orders under Articles 1(2), 39, 43, 45(6) and 83, means orders made by the Department;

“owner”, means the person for the time being receiving the rackrent of the land in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the land were let at a rackrent;

“prescribed” means prescribed by regulations;

“private dwelling” means—

- (a) a hereditament used wholly for the purposes of a private dwelling as determined in accordance with Schedule 5 of the Rates (Northern Ireland) Order 1977 ; and
- (b) a caravan as defined in section 25(1) of the Caravans Act (Northern Ireland) 1963 ;

“quarry” has the same meaning as in the<sup>F5</sup> Quarries (Northern Ireland) Order 1983];

“regulations” means regulations made by the Department;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“street” has the same meaning as in the Public Health (Ireland) Act 1878 ;

“vessel” includes a hovercraft within the meaning of the Hovercraft Act 1968 .

(2) Except so far as this Order expressly provides otherwise and subject to the provisions of section 20(1) of the Interpretation Act (Northern Ireland) 1954 (which relates to offences under two or more laws) nothing in this Order—

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Order or an instrument made under this Order;
- (b) affects any restriction imposed by or under any other statutory provision; or
- (c) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Order.

(3) In so far as any interest in Crown land is not a Crown interest, this Order shall apply to the land as if it were not Crown land; and in this paragraph—

“Crown land” means land in which there is a Crown interest;

“Crown interest” means an interest—

- (a) which belongs to Her Majesty in right of the Crown or belongs to a government department; or
- (b) which is held in trust for Her Majesty for the purposes of a government department.

**Annotations:**

**F3** prosp. rep. by [1997 NI 18](#)

**F4** [1997 NI 18](#)

**F5** [1983 NI 4](#)

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## PART II

### WASTE ON LAND

#### Annotations:

#### Modifications etc. (not altering text)

- C1** Pt. II (arts. 3-36) modified by S.R. 2003/493, Sch. 3 Pt. I para. 10 (as substituted (8.4.2011) by Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127), regs. 1, 40 (with reg. 9(2)))

*Arts. 3 and 4 rep. by 1997 NI 19*

*Arts. 5#17 rep. by 1997 NI 19*

Waste other than controlled waste

*Art. 18 rep. by 1997 NI 19*

#### Removal of waste deposited on land

**19.**—(1) If any waste, other than controlled waste or a motor vehicle, is deposited on any land in the open air or on any other land forming part of a road in the district of a district council in contravention of<sup>F6</sup> Article 31(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 or Article] 28(1), the council may, subject to paragraph (2), remove the waste.

(2) A district council may not exercise its powers under paragraph (1) as respects waste deposited on land appearing to the council to be occupied by any person unless the council has served on him notice that the council proposes to remove the waste and he has failed to serve on the council, within the prescribed period, notice that he objects to the proposal.

(3) A district council by whom any waste is removed under paragraph (1) may recover the cost of doing so and of disposing of it from any person who deposited the waste on the land or any person convicted of an offence under<sup>F6</sup> Article 31(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 or Article] 28(1) in consequence of the depositing of the waste on that land.

#### Annotations:

- F6** 1997 NI 19

#### Powers of district councils as respects other waste

**20.** Each district council may collect information about, and make arrangements for the disposal of, waste which is situated or likely to be situated in its district and is not controlled waste; but nothing in section 98 of the Local Government Act (Northern Ireland) 1972 or in Article 72 or 76 shall apply to functions conferred on a district council or information collected by a district council under this Article.

*Arts. 21—24 rep. by 1997 NI 19*

*Arts. 25—28 rep. by 1994 NI 10*

Motor vehicles

#### Penalty for abandoning motor vehicles

**29.**—(1) Any person who, without lawful authority, abandons on any land in the open air, or on any other land forming part of a road,—

- (a) a motor vehicle, or

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- (b) any thing which formed part of a motor vehicle and was removed from it in the course of dismantling the vehicle on the land,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>[F7]</sup> level 5 on the standard scale] or, in the case of a second or subsequent conviction, to such a fine or to imprisonment for a term not exceeding three months or both.

(2) For the purposes of paragraph (1), a person who leaves any motor vehicle or thing which formed part of a motor vehicle on any land in such circumstances or for such a period that he may reasonably be assumed to have abandoned it there shall be deemed to have abandoned it there or, as the case may be, to have brought it to the land for that purpose unless the contrary is shown.

(3) In this Article and Article 30, “road” includes any street, carriageway, highway or roadway to which the public has access.

**Annotations:**

F7 1984 NI 3

PROSPECTIVE

**[F8] 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).

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(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.

**Annotations:**

**F8** Arts. 29A-29C inserted (prosp.) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), [ss. 7, 78](#)

PROSPECTIVE

**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.

**Annotations:**

**F8** Arts. 29A-29C inserted (prosp.) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), [ss. 7, 78](#)

PROSPECTIVE

**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”).

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- (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.]

**Annotations:**

**F8** Arts. 29A-29C inserted (prosp.) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), ss. 7, 78

**Removal of abandoned vehicles**

**30.—**(1) Where it appears to a district council that a motor vehicle in its district is abandoned without lawful authority on any land in the open air or on any other land forming part of a road the council shall, subject to the following provisions of this Article, remove the vehicle.

(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 him notice that it proposes to do so 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; and 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) Where under this Article a district council proposes to remove a vehicle which in its opinion is in such a condition that it ought to be destroyed the council shall, not less than the prescribed period before removing it, cause to be affixed to the vehicle a notice stating that the council proposes to remove it for destruction on the expiration of that period.

(4) While a vehicle, other than a vehicle to which a notice was affixed under paragraph (3), is in the custody of a district council under this Article, the council shall take such steps as are reasonably necessary for the safe custody of the vehicle.

### **Disposal of removed vehicles**

**31.**—(1) Subject to paragraph (5), a district council may, in such manner as it thinks fit, dispose of any vehicle which is in its custody in pursuance of Article 30—

- (a) in the case of a vehicle to which a notice was affixed under paragraph (3) of that Article and on which no current licence was displayed at the time of its removal, at any time in the course of or after its removal;
- (b) in the case of a vehicle to which a notice was so affixed and on which a current licence was so displayed, at any time after the licence ceases to be in force;
- (c) in any other case, at any time after the council has taken reasonable steps to find a person appearing to it to be the owner of the vehicle and either—
  - (i) the council has failed to find such a person, or
  - (ii) he has failed to comply with a notice served on him by the council requiring him to remove the vehicle within the prescribed period from the custody of the council,

but, in a case where it appears to the council that a licence is in force in respect of the vehicle, not before the licence ceases to be in force.

(2) In paragraph (1)—

- (a) any reference in sub-paragraphs (a) and (b) to a current licence includes a reference to a licence which was current during any part of the period of fourteen days ending with the day preceding that on which the removal of the vehicle in question took place; and
- (b) for the purposes of sub-paragraphs (b) and (c) a licence shall be treated as still in force for a period of fourteen days beginning with the day following that on which it expired, and “ceases to be in force” shall be construed accordingly.

(3) The power to dispose of vehicles conferred on a district council by paragraph (1) includes power—

- (a) to provide plant and apparatus for the purpose of disposing of vehicles; and
- (b) to enter into an agreement with any other person for the provision of facilities by him for the purpose of disposing of vehicles at any place under his control.

(4) A district council by whom a vehicle is disposed of under this Article shall give particulars of the disposal to any person who appears to it to have been the owner of the vehicle immediately before it was disposed of.

(5) If before a vehicle is disposed of by a district council under the foregoing provisions of this Article the vehicle is claimed by a person who satisfies the council that he is its owner and pays to the council any expenses reasonably incurred by it in respect of its removal and storage, the council shall permit him to remove the vehicle from its custody during such period as may be prescribed; and if before the expiration of the period of one year beginning with the date on which a vehicle is sold by a district council under this Article any person satisfies the council that at the time of its sale he was the owner of the vehicle, the council shall pay over to him any sum by which the proceeds of sale exceed any expenses reasonably incurred by the council in respect of the removal, storage and disposal of the vehicle.

(6) If in the case of any vehicle it appears to the district council that more than one person is or was its owner at the relevant time, such one of them as the council thinks fit shall be treated as its owner for the purposes of paragraph (5).

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PROSPECTIVE

### [<sup>F9</sup>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.]

#### Annotations:

**F9** Art. 31A inserted (prosp.) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011](#) (c. 23), ss. 10, 78

### Recovery of expenses connected with removed vehicles

**32.**—(1) Where a vehicle is removed by a district council under Article 31(1), the council may recover from any person responsible any expenses reasonably incurred by it—

- (a) in respect of the removal of the vehicle; and
- (b) in respect of any period during which the vehicle is in its custody; and
- (c) where the vehicle is disposed of under Article 31, in respect of its disposal.

(2) Any sum recoverable by virtue of this Article shall be a civil debt recoverable summarily; and without prejudice to the foregoing provisions of this paragraph the court by which a person is convicted of an offence under Article 29(1) in respect of a motor vehicle, may on the application of the district council by whom the vehicle was removed as aforesaid and in addition to any other order made by the court in relation to that person order him to pay to the council any sum which, in the opinion of the court, the council are entitled to recover from him under this Article in respect of the vehicle.

(3) In this Article “person responsible”, in relation to a vehicle, means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed under Article 30(1), unless he shows that he was not concerned in and did not know of its being put there;
- (b) any person by whom it was put in the place aforesaid;
- (c) any person convicted of an offence under Article 29(1) in consequence of the putting of the vehicle in the place aforesaid.

### Supplemental

### Enforcement of Articles 28 and 29

**33.**—(1) Where an authorised person believes that an offence under Article<sup>F10</sup> . . . 29 has been committed, he may demand the name and address of any person whom he believes to be guilty of the offence.

(2) An authorised person (other than the owner or occupier of land or a constable in uniform) demanding the name and address of any other person under paragraph (1) shall, if so required, produce his credentials.

(3) If a person whose name and address has been demanded under paragraph (1) fails to comply with the demand, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F11</sup> level 2 on the standard scale].



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(4) Without prejudice to the right of any other person to institute proceedings for an offence under Article . . . 29, a district council may institute proceedings for such an offence committed in its district and a district council or public body may institute proceedings for such an offence committed on land controlled or managed by it.

(5) In this Article—

“authorised person” in relation to an offence believed to have been committed, means—

- (a) an officer of the district council within whose district the . . . land is situated, being an officer authorised by the council to exercise functions under this Article;
- (b) an officer of the district council or public body by whom the . . . land is controlled or managed, being an officer authorised by the council or body to exercise functions under this Article;
- (c) the owner or occupier of the . . . land, or any servant or agent of his duly authorised by him in writing, or
- (d) a constable;

“believes” means believes on reasonable grounds.

**Annotations:**

**F10** 1994 NI 10

**F11** 1984 NI 3

*Arts. 34#35 rep. by 1997 NI 19*

**Interpretation, etc., of Part II**

**36.**—(1) In this Part—

*Definition rep. by 1997 NI 19*

“carriageway” means a way constituting or forming part of a road, being a way over which the public have a right of way for the passage of motor vehicles;

[<sup>F12</sup>“controlled waste” has the same meaning as in the Waste and Contaminated Land (Northern Ireland) Order 1997]

*Definition rep. by 1997 NI 19*

“licence”, in relation to a vehicle, means a licence issued in respect of the vehicle under<sup>F13</sup> the Vehicle Excise and Registration Act 1994] or anything which appears to the district council concerned to be a corresponding licence in a country other<sup>F13</sup> than the United Kingdom];

*Definition rep. by 1994 NI 10*

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer;

“owner”, in relation to a motor vehicle which is the subject of a hiring agreement or hire-purchase agreement, includes the person entitled to possession of the vehicle under the agreement;

“public body” means any public authority, board, commissioners or public body of any kind constituted by or under any statutory provision whether of a general or special nature;

*Definition rep. by 1997 NI 19*

“road” has the same meaning as in the Roads Act (Northern Ireland) 1948 <sup>F14</sup>;

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“waste” includes—

- (a) any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process; and
- (b) any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled,

but does not include a substance which is an explosive within the meaning of the Explosives Acts 1875 to 1970 or any substance to which Article 3 of the Explosives (Northern Ireland) Order 1972 applies;

and for the purposes of this Part any thing which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.

*Paras. (2)#(4) rep. by 1997 NI 19*

(5) In Articles 19, 28, 29 and 30 any reference to a place or land in the open air includes a reference to a place or land covered only by water.

(6) The district of a district council which is bounded by or to seaward of the high-water mark of mean tides shall also include for the purposes of this Part, the land between that high-water mark and the low-water mark of ordinary spring tides which is outside that district to seaward of any place where that high-water mark is within or on the boundary of that district.

**Annotations:**

**F12** 1997 NI 19

**F13** 1994 c. 22

**F14** 1980 NI 11

**Modifications etc. (not altering text)**

**C2** Art. 36 modified (temp. from 1.12.2006) by [Manufacture and Storage of Explosives Regulations \(Northern Ireland\) 2006 \(S.R. 2006/425\)](#), reg. 27(1), **Sch. 6 para. 12** (with reg. 26)

## PART III

### NOISE

#### Periodical inspections by district councils

##### Periodical inspections by district councils

**37.** Every district council shall cause its district to be inspected—

- (a) to detect anything which ought to be dealt with under Article 38; and
- (b) to decide how to exercise its powers concerning noise abatement zones.

#### Summary proceedings to deal with noise

##### Summary proceedings by district councils

**38.—(1)** Where a district council is satisfied that noise amounting to a nuisance exists, or is likely to occur or recur, in the district of the council, the council shall serve a notice imposing all or any of the following requirements—

- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

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(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for the purpose of the notice or as may be specified in the notice;

and the notice shall specify the time or times within which the requirements of the notice are to be complied with<sup>F15</sup> but a district council shall not, without the consent of the Department of the Environment, serve any such notice in respect of noise if proceedings in respect thereof might be initiated under regulations under Article 4 of the Environment (Northern Ireland) Order 2002.]

(2) The notice shall be served on the person responsible for the nuisance or, if that person cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises from which the noise is or would be emitted.

(3) The person served with the notice may appeal against the notice to a court of summary jurisdiction within twenty-one days from service of the notice.

(4) If a person on whom a notice is served under this Article without reasonable excuse contravenes any requirement of the notice, he shall be guilty of an offence against this Part.

(5) In proceedings for an offence under paragraph (4) in respect of noise caused in the course of a trade or business, it shall be a defence to prove that the best practicable means have been used for preventing, or for counteracting the effect of, the noise.

(6) In proceedings for an offence under paragraph (4) of contravening requirements imposed under paragraph (1) 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; or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under Article 46, that the level of noise emanating from the premises at that time was not such as to constitute a contravention of the notice under Article 46; or

(c) where the alleged offence was committed at a time when the premises were not subject to a notice under Article 46, and when a level fixed under Article 47 applied to the premises, that the level of noise emanating from the premises at that time did not exceed that level; and sub-paragraphs ( b ) and ( c ) apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

(7) Where a 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 its district, the district council may act under this Article 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.

(8) If a district council is of opinion that proceedings for an offence under paragraph (4) would afford an inadequate remedy in the case of any noise which is a nuisance, it may 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 that the district council has suffered no damage from the nuisance; but in any proceedings taken under this paragraph it shall be a defence to prove that the noise was authorised by a notice under Article 40 or a consent under Article 41.

**Annotations:**

**F15** SR 2003/46

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### Summary proceedings by occupier of premises

**39.**—(1) A court of summary jurisdiction may act under this Article on a complaint made by the occupier of any premises on the ground that in his capacity as occupier of the premises he is aggrieved by noise amounting to a 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, 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.

(3) Proceedings under this Article shall be brought against the person responsible for the nuisance or, if that person cannot be found, against the owner or occupier of the premises from which the noise is or would be emitted.

(4) A person who without reasonable excuse contravenes any requirement of an order under paragraph (2) shall be guilty of an offence against this Part.

(5) In proceedings for an offence under this Article in respect of noise caused in the course of a trade or business, it shall be a defence to prove that the best practicable means have been used for preventing, or for counteracting the effect of, the noise.

(6) If a person is convicted of an offence under paragraph (4), 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.

### Construction sites

#### Control of noise on construction sites

**40.**—(1) This Article applies to works of the following description, that is to say—

- (a) the erection, construction, alteration, repair or maintenance of buildings, structures or roads;
- (b) breaking up, opening or boring under any road or adjacent land in connection with the construction, inspection, maintenance or removal of works;
- (c) demolition or dredging work; and
- (d) (whether or not also comprised in sub-paragraph ( a ), ( b ) or ( c ) above) any work of engineering construction;

but shall not apply to any such works carried out by a government department.

(2) Where it appears to a district council that works to which this Article applies are being, or are going to be, carried out on any premises, the council may serve a notice imposing requirements as to the way in which the works are to be carried out and may if it thinks fit publish notice of the requirements in such way as appears to the council to be appropriate.

(3) The notice may in particular—

- (a) specify the plant or machinery which is, or is not, to be used;
- (b) specify the hours during which the works may be carried out;
- (c) specify the level of noise which may be emitted from the premises in question or at any specified point on those premises or which may be so emitted during specified hours; and
- (d) provide for any change of circumstances.

*Status:* This version of this Order contains provisions that are prospective.

*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to Pollution Control and Local Government (Northern Ireland) Order 1978. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (4) In acting under this Article the district council shall have regard—
- (a) to the relevant provisions of any code of practice issued under this Part;
  - (b) to the need for ensuring that the best practicable means are employed to minimise noise;
  - (c) before specifying any particular methods or plant or machinery, to the desirability in the interests of any recipients of the notice in question of specifying other methods or plant or machinery which would be substantially as effective in minimising noise and more acceptable to them;
  - (d) to the need to protect any persons in the locality in which the premises in question are situated from the effects of noise.
- (5) A notice under this Article shall be served on the person who appears to the district council to be carrying out, or going to carry out, the works, and on such other persons appearing to the council to be responsible for, or to have control over, the carrying out of the works as the council thinks fit.
- (6) A notice under this Article may specify the time within which the notice is to be complied with, and may require the execution of such works, and the taking of such other steps, as may be necessary for the purpose of the notice, or as may be specified in the notice.
- (7) A person served with a notice under this Article may appeal against the notice to a court of summary jurisdiction within twenty-one days from the service of the notice.
- (8) If a person on whom a notice is served under this Article without reasonable excuse contravenes any requirement of the notice he shall be guilty of an offence against this Part.

#### **Prior consent for work on construction sites**

**41.**—(1) A person who intends to carry out works to which Article 40 applies may apply to the district council for a consent under this Article.

(2) Where approval under the Building Regulations (Northern Ireland) Order 1972<sup>F16</sup> is required for the carrying out of the works, the application under this Article must be made at the same time as, or later than, the request for the approval under building regulations.

- (3) An application under this Article shall contain particulars of—
- (a) the works, and the method by which they are to be carried out; and
  - (b) the steps proposed to be taken to minimise noise resulting from the works.

(4) If the district council considers that the application contains sufficient information for the purpose and that, if the works are carried out in accordance with the application, it would not serve a notice under Article 40 in respect of those works, the district council shall give its consent to the application.

(5) In acting under this Article a district council shall have regard to the considerations set out in Article 40(4) and may—

- (a) attach any conditions to a consent; and
- (b) limit or qualify a consent to allow for any change in circumstances; and
- (c) limit the duration of a consent,

and any person who knowingly carries out the works, or permits the works to be carried out, in contravention of any conditions attached to a consent under this Article shall be guilty of an offence against this Part.

(6) The district council shall give notice of its decision to the applicant and if the council gives its consent to the application it may if it thinks fit publish notice of the consent, and of the works to which it relates in such way as appears to the council to be appropriate.

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(7) If within the period of twenty-eight days from receipt of the application, or within such longer period as the council and the applicant may at any time agree in writing, the district council—

- (a) has not given notice to the applicant of its decision on the application; or
- (b) refuses its consent; or
- (c) gives its consent but attaches any condition to the consent or limits or qualifies the consent in any way,

the applicant may appeal to a court of summary jurisdiction within twenty-one days from the end of that period.

(8) In any proceedings for an offence under Article 40(8) it shall be a defence to prove that the alleged contravention amounted to the carrying out of the works in accordance with a consent given under this Article.

(9) A consent given under this Article shall contain a statement to the effect that the consent does not of itself constitute any ground of defence against any proceedings instituted under Article 39.

(10) Where a consent has been given under this Article and the works are carried out by a person other than the applicant for the consent, the applicant shall take all reasonable steps to bring the consent to the notice of that other person; and if he fails to comply with this paragraph he shall be guilty of an offence against this Part.

**Annotations:**

**F16** 1979 NI 16

Noise in streets

**Noise in streets**

**42.**—(1) Subject to the provisions of this Article, a loudspeaker in a street shall not be operated—

- (a) between the hours of nine in the evening and eight in the following morning, for any purpose;
  - (b) at any other time, for the purpose of advertising any entertainment, trade or business;
- and any person who operates or permits the operation of a loudspeaker in contravention of this paragraph shall be guilty of an offence against this Part.

(2) Paragraph (1) shall not apply to the operation of a loudspeaker—

- (a) for police, [<sup>F17</sup>fire and rescue] or ambulance purposes, by the Department in the exercise of its functions under the [<sup>F18</sup>Water (Northern Ireland) Order 1999][<sup>F19</sup>by a water undertaker or a sewerage undertaker in the exercise of any of its functions] or by a district council within its district;
- (b) for communicating with persons on a vessel for the purposes of directing the movement of that or any other vessel;
- (c) if the loudspeaker forms part of a public telephone system;
- (d) if the loudspeaker—
  - (i) is in or fixed to a vehicle, and
  - (ii) is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic, and
  - (iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity;

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- (e) otherwise than on a road, by persons employed in connection with a transport undertaking used by the public in a case where the loudspeaker is operated solely for making announcements to passengers or prospective passengers or to other persons so employed;
- (f) by a travelling showman on land which is being used for the purposes of a pleasure fair;
- (g) in case of emergency.

(3) Paragraph (1)(b) shall not apply to the operation of a loudspeaker between the hours of noon and seven in the evening on the same day if the loudspeaker—

- (a) is fixed to a vehicle which is being used for the conveyance of a perishable commodity for human consumption; and
- (b) is operated solely for informing members of the public (otherwise than by means of words) that the commodity is on sale from the vehicle; and
- (c) is so operated as not to give reasonable cause for annoyance to persons in the vicinity.

**Annotations:**

**F17** Words in art. 42(2)(a) substituted (1.7.2006) by [Fire and Rescue Services \(Northern Ireland\) Order 2006 \(S.I. 2006/1254 \(N.I. 9\)\)](#), arts 1(3), 63(1), **Sch. 3 para. 12** (with arts. 49, 62); S.R. 2006/257, **art. 2(d)**

**F18** 1999 NI 6

**F19** Words in art. 42(2)(a) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 14(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

## Noise abatement zones

### Designation of zones

**43.**—(1) A district council may by order<sup>F20</sup> . . . (in this Part referred to as a “noise abatement order”) designate all or any part of its district a noise abatement zone.

(2) An order under this Article shall specify the classes of premises to which it applies (that is to say, the classes of premises subject to control under the following provisions of this Part).

(3) The provisions of Schedule 1 shall apply to the<sup>F20</sup> making] and coming into operation of an order under this Article.

**Annotations:**

**F20** 1985 NI 15

### Register of noise levels

**44.**—(1) Every district council which has designated its district or any part of its district a noise abatement zone shall measure the level of noise emanating from premises within the zone which are of any class to which the relevant noise abatement order relates.

(2) The district council shall record all measurements taken under paragraph (1) in a register (in this Part referred to as a “noise level register”) to be kept by the council for the purpose in accordance with regulations.

(3) The district council on recording any measurement in the noise level register shall serve a copy of that record on the owner and occupier of the premises in respect of which the measurement was taken; and any person on whom a copy of such a record is served may, within twenty-eight days of the date of service, appeal to the Department against the record.

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(4) On an appeal to the Department under paragraph (3) the Department may give to the district council in question such directions as the Department thinks fit as to the record of the measurement of noise which is the subject of the appeal, and the council shall comply with the directions.

(5) Except as provided by paragraphs (3) and (4) the validity or accuracy of any entry in a noise level register shall not be questioned in any proceedings under this Part.

(6) The premises as to which a district council is to make measurements under this Article shall include those which come within a class to which the relevant noise abatement order relates after the making of the order; and it shall be for the council to determine, both for those premises and all other premises of any class to which the relevant noise abatement order relates, when the measurements under this Article are to be made.

(7) A noise level register shall be open to public inspection at the principal office of the district council free of charge at all reasonable hours, and the council shall afford members of the public reasonable facilities for obtaining from the authority, on payment of reasonable charges, copies of entries in the register.

(8) Provision may be made by regulations—

- (a) for determining, or for authorising the Department to determine, the methods by which noise levels are to be measured for the purposes of any provision of this Article and Articles 45 to 47; and
- (b) for enabling noise levels calculated in accordance with the regulations, or in accordance with the directions of the Department to be treated for those purposes as measured by a method determined under sub-paragraph ( a ).

### **Noise exceeding registered level**

**45.—**(1) The level of noise recorded in the noise level register in respect of any premises shall not be exceeded except with the consent in writing of the district council.

(2) The district council's consent may be made subject to such conditions, whether as to the amount by which the level of noise may be increased, or as to the period for which, or the periods during which, the level of noise may be increased, as may be specified in the consent; and the council shall record particulars of the consent in the noise level register.

(3) If within the period of two months beginning with the date on which a district council receives an application for its consent under this Article or within such longer period as the council and the applicant agree in writing, the council has not notified the applicant of its decision on the application, the council shall be deemed to have refused the consent.

(4) An applicant for consent under this Article may appeal to the Department against the district council's decision on the application within the period of three months beginning with the date on which the council notifies him of the decision or, in a case falling within paragraph (3), beginning with the expiration of the period or longer period there mentioned; and the district council shall act in accordance with the decision of the Department on the appeal.

(5) If noise emitted from any premises constitutes a contravention of paragraph (1) or of a condition attached to a consent under this Article, the person responsible shall be guilty of an offence against this Part.

(6) The court of summary jurisdiction convicting a person of an offence under paragraph (5) may, if satisfied that the offence is likely to continue or recur, make an order requiring the execution of any works necessary to prevent it continuing or recurring, and if that person without reasonable excuse contravenes any requirement of the order he shall be guilty of an offence against this Part.

(7) The court of summary jurisdiction may, after giving the district council in whose district the premises are situated an opportunity of being heard, direct the council to do anything which the



court may under paragraph (6) require the person convicted to do, either instead of, or in addition to, imposing any requirement on that person.

(8) A consent given under this Article shall contain a statement to the effect that the consent does not of itself constitute any ground of defence against any proceedings instituted under Article 39.

### **Reduction of noise levels**

**46.**—(1) If it appears to the district council—

- (a) that the level of noise emanating from any premises to which a noise abatement order applies is not acceptable having regard to the purposes for which the order was made; and
- (b) that a reduction in that level is practicable at reasonable cost and would afford a public benefit,

the council may serve a notice on the person responsible.

(2) The notice shall require that person—

- (a) to reduce the level of noise emanating from the premises to such level as may be specified in the notice;
- (b) to prevent any subsequent increase in the level of noise emanating from those premises without the consent of the district council; and
- (c) to take such steps as may be specified in the notice to achieve those purposes.

(3) A notice under this Article (in this Part referred to as a “noise reduction notice”) shall specify a time, not being less than six months from the date of service of the notice, within which the noise level is to be reduced to the specified level and, where the notice specifies any steps necessary to achieve that purpose, within which those steps shall be taken.

(4) A noise reduction notice may specify particular times, or particular days, during which the noise level is to be reduced, and may require the noise level to be reduced to different levels for different times or days.

(5) A noise reduction notice shall take effect whether or not a consent under Article 45 authorises a level of noise higher than that specified in the notice.

(6) The district council shall record particulars of a noise reduction notice in the noise level register.

(7) A person who is served with a noise reduction notice may, within three months of the date of service, appeal to a court of summary jurisdiction against the notice.

(8) A person who without reasonable excuse contravenes a noise reduction notice shall be guilty of an offence against this Part.

(9) In proceedings for an offence under paragraph (8) in respect of noise caused in the course of a trade or business, it shall be a defence to prove that the best practicable means had been used for preventing, or for counteracting the effect of, the noise.

### **New buildings, etc.**

**47.**—(1) Where it appears to the district council—

- (a) that a building is going to be constructed and that a noise abatement order will apply to it when it is erected; or
- (b) that any premises will, as the result of any works, become premises to which a noise abatement order applies,

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the council may, on the application of the owner or occupier of the premises or a person who satisfies the authority that he is negotiating to acquire an interest in the premises or on its own initiative, determine the level of noise which will be acceptable as that emanating from the premises.

(2) The district council shall record in the noise level register the level of noise determined under this Article for any premises.

(3) The district council shall give notice of its decision to the applicant or, in the case of a decision made on its own initiative, to the owner or the occupier of the premises, and the recipient of the notice may appeal to the Department against that decision within three months of the date on which the council notifies him of that decision; and the district council shall act in accordance with the decision of the Department on the appeal.

(4) If within the period of two months beginning with the date when the district council receives an application under paragraph (1), or within such longer period as the council and the applicant may at any time agree in writing, the council has not given notice to the applicant of its decision on the application, the council shall be deemed to have given him notice that it has decided not to make a determination on the application; and the applicant may accordingly appeal against the decision to the Department under paragraph (3).

(5) Where at any time after the coming into force of a noise abatement order any premises become premises to which the order applies as a result of the construction of a building or as a result of any works carried out on the premises but no level of noise has been determined under this Article as respects the premises, Article 46 shall apply as if—

- (a) paragraph (1)( *b*) were omitted; and
- (b) three months were substituted for six months in paragraph (3); and
- (c) paragraph (9) were omitted.

Noise from plant or machinery

### **Noise from plant or machinery**

**48.**—(1) Provision may be made by regulations—

- (a) for requiring the use on or in connection with any plant or machinery of devices or arrangements for reducing the noise caused by the plant or machinery;
- (b) for limiting the level of noise which may be caused by any plant or machinery when used for works to which Article 40 applies or which may be caused outside a factory within the meaning of the Factories Act (Northern Ireland) 1965 by the use of plant or machinery in the factory;

and regulations under this Article may apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations.

(2) The Department before making regulations under this Article, shall consult persons appearing to the Department to represent producers and users of plant and machinery with a view to ensuring that the regulations do not contain requirements which in the opinion of the Department would be impracticable or involve unreasonable expense.

(3) Any person who contravenes or causes or permits another person to contravene regulations under this Article shall be guilty of an offence against this Part; but in any proceedings for a contravention of regulations made under paragraph (1)( *a*) it shall be a defence to prove that means were used for the purpose of reducing the noise in question which were not less effective for that purpose than the means required by the regulations.

(4) Without prejudice to the generality of Article 86(2), different regulations may be made under this Article for different localities, and each district council shall enforce the provisions of regulations within its district.

(5) Nothing in this Article or in regulations under this Article shall be construed as derogating from any other provision of this Part.

## Supplemental

### Execution of works by district council

**49.**—(1) This Article applies—

- (a) to a notice under Article 38;
- (b) to a noise reduction notice; and
- (c) to an order of a court of summary jurisdiction under Article 39(2) or 45(6),

being a notice or order which requires any person to execute any works.

(2) If that person fails to execute all or any of the works in accordance with the notice or order, the district council may execute those works.

(3) Where a district council executes works under—

- (a) Article 39(6) or 45(7); or
- (b) this Article,

the district council may recover from the person in default the expenditure incurred by the council in executing the works, except such of the expenditure as that person shows was unnecessary in the circumstances.

(4) In proceedings to recover any amount due to a district council under paragraph (3) in respect of works executed by the council under this Article, it shall not be open to the person in default to raise any question which he could have raised on an appeal against the notice or order.

(5) In this Article “the person in default” means—

- (i) in a case under Article 39(6), the person against whom the order was made under paragraph (2) of that Article,
- (ii) in a case under Article 45(7), the person convicted of an offence under paragraph (5) of that Article, and
- (iii) in any other case, the person to whom the notice or order applies.

### Appeals

**50.**—(1) Regulations may make provision as to appeals under this Part to the Department or to courts of summary jurisdiction; and the regulations may in particular—

- (a) include provisions comparable to those in section 42 of the Public Health Acts Amendment Act 1907 (appeals against notices requiring the execution of works);
- (b) prescribe the cases in which a notice under this Part is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
- (c) prescribe the cases in which the decision on appeal may in some respects be less favourable to the appellant than the decision from which he is appealing;
- (d) prescribe the cases in which the appellant may claim that a notice should have been served on some other person and prescribe the procedure to be followed in those cases.

(2) Regulations may prescribe the procedure and practice as respect appeals to the Department under this Part, and in particular may make provision as respects—

- (a) the particulars to be included in the notice of appeal;
- (b) the persons on whom notice of appeal is to be served and the particulars, if any, to accompany the notice; and

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(c) the abandonment of an appeal.

(3) In entertaining any appeal under this Part the Department or, as the case may be, the court of summary jurisdiction shall have regard to any duty imposed by law on the appellant which concerns the activities in the course of which the noise is emitted.

### **Codes of practice for minimising noise**

**51.**—(1) For the purpose of giving guidance on appropriate methods (including the use of specified types of plant or machinery) for minimising noise the Department may by order—

- (a) prepare and approve and issue such codes of practice as in the opinion of the Department are suitable for the purpose; and
- (b) approve such codes of practice issued or proposed to be issued otherwise than by the Department as in the opinion of the Department are suitable for the purpose.

(2) The Department shall by order under paragraph (1)( a) or ( b) approve a code of practice for the carrying out of works to which Article 40 applies.

### **“Best practicable means”**

**52.**—(1) This Article shall apply for the construction of references in this Part to best practicable means.

(2) In that expression “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.

(3) 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 acoustic structures.

(4) The test of best practicable means is to apply only so far as compatible with any duty imposed by law, and in particular is to apply to statutory undertakers only so far as compatible with the duties imposed on them in their capacity of statutory undertakers.

(5) The said 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.

(6) Subject to paragraphs (1) to (5), regard shall be had, in construing references to “best practicable means”, to any relevant provision of a code of practice approved under Article 51.

### **Interpretation, etc., of Part III**

**53.**—(1) In this Part—

[<sup>F21</sup>“electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992]

“noise” includes vibration;

“noise abatement order” and “noise abatement zone” have the meanings given by Article 43;

“noise level register” has the meaning given by Article 44(2);

“noise reduction notice” has the meaning given by Article 46(3);

“person responsible”, in relation to the emission of noise, means the person to whose act, default or sufferance the noise is attributable;

“statutory undertakers” means persons authorised by any statutory provision to carry on any railway, light railway, tramway, road transport, dock, harbour, pier or lighthouse undertaking, <sup>F22</sup> . . . [<sup>F21</sup>, or an electricity [<sup>F23</sup>,water] undertaker], and includes the Post Office;

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“work of engineering construction” means the construction, structural alteration, maintenance or repair of any railway line or siding or any dock, harbour, inland navigation, tunnel, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer, [<sup>F24</sup>waste water treatment works] or gasholder.

(2) The district of a district council which is bounded by or is to seaward of the high-water mark of mean tides shall also include for the purposes of this Part except Articles 42 to 47, the territorial sea which is outside that district to seaward of any place where that mark is within or on the boundary of that district; and—

*Sub.#para. (a) rep. by 1985 NI 15*

(b) this Part (except Articles 42 to 47 and this paragraph) shall have effect, in relation to any district included in the district of a district council under this paragraph—

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

(ii) with such other modifications, if any, as are prescribed.

(3) Where more than one person is responsible for noise, this Part 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, or would result in a level of noise justifying action under this Part.

(4) This Part does not apply to noise caused by aircraft other than model aircraft and does not confer functions on port health authorities.

#### Annotations:

**F21** 1992 NI 1

**F22** 1996 NI 2

**F23** Words in art. 53(1) in definition of "statutory undertakers" inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 14(2)(a)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**F24** Words in art. 53(1) in definition of "work of engineering construction" substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 14(2)(b)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

#### Penalties

**54.—(1)** A person guilty of an offence against any provision of this Part shall be liable on summary conviction to a fine not exceeding [<sup>F25</sup>level five on the standard scale]; and where a person is guilty of an offence against that provision within one year after the conviction he shall be guilty of a further offence and shall be liable, in addition to that fine, to a fine not exceeding £50 for every day subsequent to the day on which he is first convicted of an offence under that provision on which that provision is contravened.

(2) In determining whether an offence is a further offence against this Part, account shall be taken of any offence under section 114 of the Public Health (Ireland) Act 1878 by way of contravening a nuisance order relating to noise as if it were an offence against this Part.

#### Annotations:

**F25** 1984 NI 3

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## PART IV

### POLLUTION OF THE ATMOSPHERE

#### Prevention of atmospheric pollution

##### Regulations about sulphur content of oil fuel for furnaces or engines

**55.**—(1) For the purpose of limiting or reducing air pollution, the Department may by regulations impose limits on the sulphur content of oil fuel which is used in furnaces or engines.

(2) The Department, before making any regulations under this Article, shall consult such persons appearing to the Department—

- (a) to represent producers and users of oil fuel;
- (b) to represent manufacturers and users of plant and equipment for which oil fuel is used; and
- (c) to be conversant with problems of air pollution;

as the Department considers appropriate.

(3) Regulations may—

- (a) prescribe the kinds of oil fuel, and the kinds of furnaces and engines, to which the regulations are to apply;
- (b) apply standards, specifications, descriptions or tests laid down in documents not forming part of the regulations;
- (c) authorise the Department to confer exemptions from any provision of the regulations.

(4) It shall be the duty—

- (a) of every district council to enforce the provisions of regulations under this Article within its district, except in relation to a furnace which is part of<sup>[F26]</sup> an installation or plant subject to regulations under Article 4 of the Environment (Northern Ireland) Order 2002 or] a<sup>[F27]</sup> process subject to the Industrial Pollution Control Order or] work subject to the Alkali Act; and

<sup>[F26]</sup>(b) of the inspectors appointed under<sup>F28</sup> the Industrial Pollution Control Order or the regulations mentioned in sub-paragraph (a) to enforce those provisions in relation to such furnaces]

(5) A person who contravenes any provision of regulations under this Article shall be guilty of an offence and liable—

- (a) on conviction on indictment to a fine; and
- (b) on summary conviction to a fine not exceeding<sup>[F29]</sup> level 5 on the standard scale];

so, however, that the regulations may in any case exclude liability to conviction on indictment, and may in any case reduce the maximum fine on summary conviction.

(6) Regulations under this Article shall, subject to any provision to the contrary in the regulations, apply to fuel used for, and to persons in, the public service of the Crown as they apply to fuel used for other purposes and to other persons; but a district council shall not be entitled under this paragraph to exercise, in relation to fuel used for any persons in that service, any power conferred on the council under section 98 of the Local Government Act (Northern Ireland) 1972 or Article 72.

(7) In this Article “oil fuel” means any liquid petroleum product produced in a refinery.

##### Annotations:

**F26** 2002 NI 7

**F27** 1997 NI 18

**Status:** This version of this Order contains provisions that are prospective.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Pollution Control and Local Government (Northern Ireland) Order 1978. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

**F28** prosp. rep. by 2002 NI 7  
**F29** 1984 NI 3

### Cable burning

**56.**—(1) A person who burns insulation from a cable with a view to recovering metal from the cable shall be guilty of an offence unless the<sup>F30</sup> burning is part of an activity subject to regulations under Article 4 of the Environment (Northern Ireland) Order 2002 or the<sup>F31</sup> burning is part of a process subject to the Industrial Pollution Control Order. . . ]

<sup>F30</sup>(2) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

#### Annotations:

**F30** 2002 NI 7  
**F31** 1997 NI 18

### Information about atmospheric pollution

### Research and publicity

**57.**—(1) A district council may—

- (a) undertake, or contribute towards the cost of, investigation and research relevant to the problem of air pollution; and
- (b) arrange for the publication of information on that problem.

(2) Without prejudice to the generality of paragraph (1), district councils may obtain information about the emission of pollutants and other substances into the air—

- (a) by issuing notices under Article 58; and
- (b) by measuring and recording the emissions, and for that purpose entering on any premises, whether by agreement or in exercise of the power conferred by section 98 of the Local Government Act (Northern Ireland) 1972 ; and
- (c) by entering into arrangements with occupiers of premises under which they measure and record emissions on behalf of the district council;

so, however, that references to premises in sub-paragraphs ( b ) and ( c ) do not include private dwellings.

(3) A district council shall not exercise the power mentioned in paragraph (2)( b ) for the purpose of measuring and recording such emissions on any premises unless—

- (a) the council has given to the occupier of the premises a notice—
  - (i) specifying the kind of emissions in question and the steps it proposes to take on the premises for the purpose of measuring and recording emissions of that kind, and
  - (ii) stating that it proposes to exercise that power for that purpose unless the occupier makes a request to the council under this paragraph; and
- (b) the period of twenty-one days beginning with the date on which the notice was given has expired,

and shall not exercise that power in consequence of the notice if during that period the occupier gives a notice to the council requesting it to serve on him a notice under Article 58 with respect to the emissions.

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(4) Nothing in this Article shall authorise a district council to investigate emissions from any<sup>F32</sup> activity subject to regulations under Article 4 of the Environment (Northern Ireland) Order 2002 or any<sup>F33</sup> process subject to the Industrial Pollution Control Order or] work subject to the Alkali Act otherwise than by issuing notices under Article 58, or by exercising the powers conferred on the council by paragraph (1)( a) of this Article without entering the work.

(5) In acting under paragraph (1)( b), a district council shall ensure that the material published is presented in such a way that no information relating to a trade secret is disclosed, except with the consent in writing of a person authorised to disclose it. . . .

(6) Breach of a duty imposed by paragraph (5) shall be actionable; but in any proceedings, whether civil or criminal, brought against a district council, or any member or officer of a district council, on the grounds that any information has been published, it shall be a defence to show that it was published in compliance with this Article.

(7) Paragraph (6) applies in particular to any proceedings brought under [<sup>F34</sup> Article 36 of the Clean Air (Northern Ireland) Order 1981 ] (which makes it an offence to disclose information relating to any trade secret).

(8) So long as a district council exercises any of its powers under paragraph (2), it shall consult such persons carrying on any trade or business in the council's district, or such organisations appearing to the council to be representative of those persons, and such persons appearing to the council to be conversant with problems of air pollution or to have an interest in local amenity as appear to the council to be appropriate—

- (a) about the way in which the district council exercises its powers under this Article and Article 58; and
- (b) about the extent to which, and the manner in which, any information collected under those powers should be made available to the public.

(9) The consultations shall take place not less than twice in each financial year.

#### Annotations:

- F32** 2002 NI 7
- F33** 1997 NI 18
- F34** 1981 NI 4

### Notices requiring information about air pollution

**58.**—(1) A district council may by notice require the occupier of any premises in its district to furnish, whether by periodical returns or by other means, such estimates or other information as may be specified or described in the notice concerning the emission of pollutants and other substances into the air from the premises.

(2) This Article shall not apply to premises in so far as they consist of a private dwelling.

[<sup>F35</sup>(2AA) If the notice relates to an installation or plant subject to regulations under Article 4 of the Environment (Northern Ireland) Order 2002, the person on whom the notice is served shall not be obliged to supply any information which, as certified by an inspector appointed under those regulations, is not of a kind which is being supplied to the inspector for the purposes of those regulations.]

[<sup>F36</sup><sup>F37</sup>(2A) If the notice relates to a process<sup>F36</sup> subject to the Industrial Pollution Control Order, the person on whom the notice is served shall not be obliged to supply any information which, as certified by an inspector appointed under that Order, is not of a kind which is being supplied to the inspector for the purposes of that Order.]



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<sup>F38</sup>(3) If the notice relates to a work subject to the Alkali Act, the person on whom the notice is served shall not be obliged to supply any information which, as certified by an inspector appointed under that Act, is not of a kind which is being supplied to the inspector for the purposes of that Act.

(4) The person on whom a notice is served under this section shall comply with the notice within six weeks of the date of service, or within such longer period as the district council may by notice allow.

(5) A notice under this Article shall not require returns at intervals of less than three months, and no one notice (whether or not requiring periodical returns) shall call for information covering a period of more than twelve months.

(6) Except so far as regulations provide otherwise, this Article shall apply to premises used for, and to persons in, the public service of the Crown as it applies to other premises and persons; but a district council shall not be entitled under this paragraph to exercise, in relation to premises used for and persons in that service, any power conferred on the council under section 98 of the Local Government Act (Northern Ireland) 1972 or Article 72.

(7) A person who—

- (a) fails without reasonable excuse to comply with the requirements of a notice served on him under this Article; or
- (b) in furnishing any estimate or other information in compliance with a notice under this Article, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular.

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F39</sup> level 5 on the standard scale].

(8) Where a person is convicted of an offence under paragraph (7) in respect of any premises and information of any kind, nothing in Article 57(3) shall prevent a district council from exercising the power of entry there mentioned for the purpose of obtaining information of that kind in respect of the premises.

**Annotations:**

**F35** 2002 NI 7

**F36** 1997 NI 18

**F37** prosp. rep. by 2002 NI 7

**F38** prosp. rep. by 1997 NI 18

**F39** 1984 NI 3

**Appeals against notices**

**59.**—(1) A person served with a notice under Article 58, or any other person having an interest in the premises to which the notices relates, may appeal to the Department—

- (a) on the ground that the giving to the council or the disclosure to the public of all or part of the information required by the notice would—
  - (i) prejudice to an unreasonable degree some private interest by disclosing information about a trade secret, or
  - (ii) be contrary to the public interest, or
- (b) on the ground that the information required by the notice is not immediately available and cannot readily be collected or obtained by the recipient of the notice without incurring undue expenditure for the purpose.

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(2) If the Department allows the appeal it may direct the district council to withdraw or modify the notice, or to take such steps as may be specified by the Department to ensure that prejudicial information is not disclosed to the public; and the district council shall comply with the direction.

(3) Regulations may make provision as to appeals under this Article, including provision about the time for bringing an appeal and the circumstances in which all or any part of the appellant's case is to be withheld from the respondent; but the Department before making any regulations under this paragraph shall consult such persons appearing to the Department—

- (a) to represent district councils;
  - (b) to represent industrial interests; and
  - (c) to be conversant with problems of air pollution;
- as the Department considers appropriate.

### **Regulations about research and publicity**

**60.**—(1) Regulations shall prescribe the manner in which, and the methods by which, district councils are to perform their functions under Articles 57 and 58.

(2) The Department, before making regulations under this Article, shall consult such persons appearing to the Department—

- (a) to represent district councils;
  - (b) to represent industrial interests; and
  - (c) to be conversant with problems of air pollution;
- as the Department considers appropriate.

(3) Regulations under this Article may in particular—

- (a) prescribe the kinds of emissions to which notices under Article 58 may relate;
- (b) prescribe the kinds of information which may be required by those notices;
- (c) prescribe the manner in which any such notice is to be given, and the evidence which is to be sufficient evidence of its having been given, and of its contents and authenticity;
- (d) require each district council to maintain in a prescribed form a register containing—
  - (i) information obtained by the council under Article 57(2) other than information as to which a direction under Article 59(2) provides that the information is not to be disclosed to the public; and
  - (ii) such information (if any) as the Department may determine, or as may be determined by or under regulations, with respect to any appeal under Article 59 which was against a notice served by the council and which the Department did not dismiss;
- (e) specify the circumstances in which district councils may enter into arrangements with owners or occupiers of premises under which they will record and measure emissions on behalf of the district councils;
- (f) specify the kinds of apparatus which district councils are to have power to provide and use for measuring and recording emissions, and for other purposes.

(4) Regulations under paragraph (3)(b) may in particular require returns of—

- (a) the total volume of gases, whether pollutant or not, discharged from the premises in question over any period;
- (b) the concentration of pollutant in the gases discharged;
- (c) the total of the pollutant discharged over any period;
- (d) the height or heights at which discharges take place;

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- (e) the hours during which discharges take place;
- (f) the concentration of pollutants at ground level.

(5) A register maintained by a district council under regulations made under paragraph (3)(d) shall be open to public inspection at the principal office of the council free of charge at all reasonable hours, and the council shall afford members of the public reasonable facilities for obtaining from the authority, on payment of reasonable charges, copies of entries in the register.

### Provision by district councils of information for the Department

61.—(1) The Department may, for the purpose of obtaining information about air pollutants, direct a district council to make such arrangements as may be specified in the direction—

- (a) for the provision, installation, operation and maintenance by the district council of apparatus for measuring and recording air pollution; and
- (b) for transmitting the information so obtained to the Department.

(2) Where apparatus is provided under a direction under paragraph (1) the Department shall defray the whole of the capital expenditure incurred by a district council in providing and installing the apparatus.

(3) Before giving a direction under paragraph (1) the Department shall consult the district council, and the district council shall comply with any direction given under that paragraph.

### Miscellaneous

*Art. 62 rep. by 1981 NI 4*

### Interpretation of Part IV

63.—<sup>F40</sup>(1) In this Part—  
“a work subject to the Alkali Act” means a work registered under section 9 of the Alkali Act, excluding the whole or part of such a work while the work or part is the subject of an order made or treated as made under [<sup>F41</sup> paragraph (8) of Article 25 of the Clean Air (Northern Ireland) Order 1981] (under which certain statutory provisions relating to clean air which apart from that [ paragraph] do not apply to works so registered may be applied to such works).

(2) References in this Part to the emission of substances into the atmosphere shall be construed as applying to substances in a gaseous or liquid or solid state, or any combination of those states.

(3) Any reference in this Part to measurement includes a reference to the taking of samples.

#### Annotations:

**F40** prosp. rep. by 1997 NI 18

**F41** 1981 NI 4

*PART V (art.64), with Schedule 3, effects amendments*

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## 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 sections 110 to 116 of the Public Health (Ireland) Act 1878 ,

the district council may serve on the person on whom it would have been appropriate to serve an abatement notice under the said section 110 (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 sections 110 to 116 of the Public Health (Ireland) Act 1878 , 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 the Planning (Northern Ireland) Order<sup>F42</sup> 1991].

**Annotations:**

**F42** 1991 NI 11

**Ruinous and dilapidated buildings and neglected sites**

**66.**—(1) If it appears to a district council that a building or structure is by reason of its ruinous or dilapidated condition seriously detrimental to the amenities of the neighbourhood, the district council may by notice require the owner thereof—

- (a) to execute such works of repair or restoration, or
- (b) if he so elects, to take such steps for demolishing the building or structure, or any part thereof, and removing any rubbish or other material resulting from or exposed by the demolition,

as may be necessary in the interests of amenity.

(2) If it appears to a district council that rubbish or other material resulting from, or exposed by, the demolition or collapse of a building or structure is lying on the site or on any adjoining land, and that by reason thereof the site or land is in such a condition as to be seriously detrimental to the amenities of the neighbourhood, the district council may by notice require the owner of the site or land to take such steps for removing the rubbish or material as may be necessary in the interests of amenity.

(3) Section 269 of the Public Health (Ireland) Act 1878 , section 7 of the Public Health Acts Amendment Act 1890 and section 7 of the Public Health Acts Amendment Act 1907 (appeals) shall apply in relation to any notice served under this Article.

(4) A notice served under paragraph (1) or (2) shall indicate both the nature of the works of repair or restoration and the works of demolition and removal of rubbish or material.

(5) Subject to the right of appeal under paragraph (3), if a person on whom a notice is served under paragraph (1) or (2) fails to comply with the notice then—

- (a) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F43</sup> level 4 on the standard scale]; and
- (b) the district council which served the notice may do what that person was required by the notice to do and may recover from him any expenses reasonably incurred by the council in doing it.

(6) Where a person is convicted under paragraph (5) in respect of a failure to comply with a notice and the failure continues after conviction, he shall be guilty of a further offence under paragraph (5) and shall be liable on summary conviction, in addition to the fine specified in that paragraph, to a fine not exceeding<sup>F43</sup> level 3 on the standard scale] for every day subsequent to the day on which he is first convicted of an offence under that paragraph on which the failure continues and before the day on which the district council has begun to exercise its powers under paragraph (5)( b).

(7) This Article shall not apply to any advertisement as defined in Article 2(2) of the Planning (Northern Ireland) Order<sup>F44</sup> 1991].

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**Annotations:**

F43 1984 NI 3

F44 1991 NI 11

**Bye-laws as to pleasure fairs**

67.—(1) A district council may make bye-laws—

- (a) for regulating the hours during which pleasure fairs may be open to the public;
- (b) for securing safe and adequate means of ingress to, and egress from, any pleasure fair;
- (c) for the prevention and suppression of nuisances, and the preservation of sanitary conditions, cleanliness, order and public safety, at any pleasure fair;
- (d) without prejudice to the generality of sub-paragraph ( c), for the prevention of outbreaks of fire which might endanger—
  - (i) stands, stalls or other structures used or intended for use in connection with any pleasure fair; or
  - (ii) caravans used or intended for use as sleeping accommodation in connection with any pleasure fair;

and for the reduction of the risks of, and the spread of fire from, such an outbreak;

and the district council shall enforce bye-laws made by it under this Article.

(2) Bye-laws made under this Article may provide that a person contravening them shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>[F45]</sup> level 4 on the standard scale] and, in the case of a continuing offence, a further fine not exceeding £5 for each day on which the offence continues after conviction.

(3) In this Article “pleasure fair” means any place<sup>[F46]</sup>, other than a place in respect of which an entertainments licence under Schedule 1 to the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 is for the time being in force,] which is for the time being used wholly or mainly for providing, whether or not in combination with any other entertainment, any entertainment to which this Article applies.

(4) The entertainments to which this Article applies are—

- (a) circuses;
- (b) exhibitions of human beings or of performing animals;
- (c) merry-go-rounds, roundabouts, swings, switchback railways;
- (d) coco-nut shies, hoop-las, shooting galleries, bowling alleys;
- (e) roller skating rinks;
- (f) dodgems or other mechanical riding or driving contrivances;
- (g) automatic or other machines intended for entertainment or amusement;
- (h) anything similar to any of the foregoing.

(5) The Department shall be the Department concerned as respects bye-laws under this Article and the Department shall not confirm any bye-law under this Article unless satisfied that all bodies which appear to be representative of the interests of those who carry on pleasure fairs and entertainments to which this Article applies and, in the case of a bye-law made under paragraph (1)( d), <sup>[F47]</sup>the Northern Ireland Fire and Rescue Service Board] have been consulted on the matters dealt with by the bye-laws.

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**Annotations:**

**F45** 1984 NI 3

**F46** 1985 NI 15

**F47** Words in [art. 67\(5\)](#) substituted (1.7.2006) by [Fire and Rescue Services \(Northern Ireland\) Order 2006 \(S.I. 2006/1254 \(N.I. 9\)\)](#), [arts. 1\(3\), 63\(1\)](#), [Sch. 3 para. 13](#) (with [arts. 49, 62](#)); [S.R. 2006/257](#), [art. 2\(d\)](#)

**Bye-laws as to seaside pleasure boats**

**68.**—(1) For the prevention of danger, obstruction or annoyance to persons bathing in the sea or using the seashore, a district council may make bye-laws—

- (a) regulating the speed of pleasure boats;
- (b) regulating the use of pleasure boats so as to prevent their navigation in a dangerous manner or without due care and attention or without reasonable consideration for other persons;
- (c) requiring the use of effectual silencers on pleasure boats propelled by internal combustion engines.

(2) Bye-laws made under this Article may provide that a person contravening them shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>[F48]</sup> level 4 on the standard scale] and, in the case of a continuing offence, a further fine not exceeding £5 for each day on which the offence continues after conviction.

(3) The Department shall be the Department concerned as respects bye-laws made under this Article; so, however, that before confirming any such bye-laws the Department may amend the bye-laws so as to reduce the area in which the bye-laws have effect if it appears to the Department appropriate to do so with a view to ensuring that the byelaws do not have effect in any area for which another district council has made or may make bye-laws under this Article.

(4) Any bye-law may be made under this Article so as to have effect not only within the district of the district council but also, where any part of that district is bounded by or is to seaward of the high-water mark of mean tides, as respects any area of the sea which is outside that district within 1,000 metres to seaward of any place where that mark is within or on the boundary of that district; and any offence against any such bye-law made to have effect as mentioned in this paragraph may be inquired into and dealt with as if committed within the district of the district council.

**Annotations:**

**F48** 1984 NI 3

**Information as to ownership of property**

**69.**—(1) A district council may, for the purpose of enabling it to perform any of its functions under the Public Health Acts (Northern Ireland) 1878 to 1967, serve on the occupier of any land, and any person who either directly or indirectly receives rent in respect of any land, a notice requiring him to state in writing the nature of his own estate in the land and the name and address of any other person known to him to have an estate in the land.

(2) Any person who—

- (a) fails without reasonable excuse to comply with the requirements of a notice served on him under this Article; or
- (b) in stating any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

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shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F49</sup> level 3 on the standard scale].

**Annotations:**

**F49** 1984 NI 3

**Notices prohibiting recurrence of nuisances, etc.**

**70.**—(1) Where a district council is satisfied that a nuisance has occurred on any premises and is likely to recur on the same premises, the council may serve a notice (in this Article referred to as a prohibition notice)—

- (a) in the case of a nuisance arising from any defect of a structural character, on the owner of the premises, and
- (b) in any other case, on the person by whose act, default or sufferance the nuisance arose or, if that person cannot be found, on the owner or occupier of the premises,

prohibiting a recurrence of the nuisance and requiring him to take such steps as may be necessary to prevent a recurrence.

(2) A district council may if it thinks fit specify in a prohibition notice any works necessary to prevent a recurrence of the nuisance to which the notice relates and require the execution of those works.

(3) A prohibition notice may be served whether the nuisance to which it relates is in existence at the time of service of the notice or not and whether or not a notice to abate the nuisance has previously been served with respect to that nuisance.

(4) A prohibition notice and a notice to abate the nuisance may be contained in the same document.

(5) Where a district council has served a prohibition notice with respect to a nuisance and the nuisance recurs or the person on whom the notice was served fails to comply with any of the requirements of the notice, the council may make a complaint relating to the nuisance under<sup>F50</sup> Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981].

(6) If on the hearing of a complaint under this Article it is proved—

- (a) that the nuisance has recurred (whether or not it still exists at the date of the hearing) or that the defendant has failed to comply with any of the requirements of the prohibition notice, and
- (b) that the nuisance is likely to recur,

the court of summary jurisdiction hearing the complaint may make an order under section 112 of the Public Health (Ireland) Act 1878 in relation to the nuisance, the requirements of the prohibition notice or both and that section shall have effect as if any reference to a nuisance or a notice to abate a nuisance were a reference to a nuisance or a prohibition notice under this Article; and the court may also exercise any other power exercisable by a court on proceedings under that section.

(7) Sections 107 to 120 and 122 to 129 of the Public Health (Ireland) Act 1878 shall, with the necessary adaptations and modifications, apply in relation to proceedings under paragraphs (5) and (6) as they apply in relation to proceedings under sections 111 and 112 of that Act.

(8) Where on the hearing of a complaint under paragraph (6) it is proved that at the date of the making of the complaint the nuisance to which the prohibition relates had recurred or that the defendant had failed to comply with any of the requirements of the notice and, in either case, that the nuisance was likely to recur, then, whether or not at the date of the hearing the failure continues or the nuisance is likely to recur, the court shall order the defendant to pay to the district council such



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reasonable sum as the court may determine in respect of the expenses incurred by the council in, or in connection with, the making of the complaint and the proceedings before the court.

(9) In this Article “nuisance” has the same meaning as in the Public Health (Ireland) Act 1878.

**Annotations:**

F50 1981 NI 26

**Reduction of numbers of pigeons and other birds in built-up areas**

71.—(1) A district council may take any steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused by the congregation in any built-up area of feral pigeons or of starlings or house sparrows.

(2) Nothing in this Article shall authorise a district council to do anything in contravention of the<sup>F51</sup> Wildlife (Northern Ireland) Order 1985].

**Annotations:**

F51 1985 NI 2

**Power of district councils to obtain information**

72.—(1) Subject to paragraph (2), a district council may serve on any person a notice requiring him to furnish 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 Order.

(2) Provision may be made by regulations for restricting the information which may be required under paragraph (1) and for determining 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 on him under this Article; or
- (b) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F52</sup> level 5 on the standard scale].

**Annotations:**

F52 1984 NI 3

**Acquisition of land otherwise than by agreement**

73. A district council may acquire land otherwise than by agreement for the purposes of the Public Health Acts (Northern Ireland) 1878 to 1967, ...<sup>F53</sup> and this Order.

**Annotations:**

F53 1981 NI 14

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### Power of entry and inspection, etc.

74.—(1) The power conferred on a person authorised in writing by a district council by section 98 of the Local Government Act (Northern Ireland) 1972 to enter any land includes power—

- (a) to enter any land for the purpose of—
  - (i) determining whether any provision of this Order or of any regulation made under this Order is being complied with;
  - (ii) carrying out such inspections, measurements and tests on the land or of any articles on it as he considers appropriate for the purpose mentioned in head (i);
- (b) to enter any vessel for any purpose for which he may enter any land;
- (c) to take and carry away for examination samples of any articles on the land or vessel.

(2) Where any motor vehicle or thing which is authorised by this Order to be removed from any land is damaged in the exercise of a right of entry conferred under section 98 of that Act of 1972 or in the doing of any thing for the purpose of which such right of entry has been so conferred, subsection (5) of that section shall not apply.

*Para.(3) inserts s.98(1)(c) in 1972 c.9 (NI)*

*Art. 75 rep. by 1985 NI 15*

### Miscellaneous

#### Prohibition of disclosure of information

76.—(1) If a person discloses information relating to any trade secret used in carrying on a particular undertaking and the information has been given to him or obtained by him under this Order he shall, subject to paragraph (2), be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>[F54]</sup> level 5 on the standard scale].

(2) A person shall not be guilty of an offence under paragraph (1) by virtue of the disclosure of any information if—

- (a) the disclosure is made—
  - (i) in the performance of his duty, or
  - (ii) under Article 57(1)( b), or
  - (iii) with the consent in writing of a person having a right to disclose the information; or
- (b) the information is of a kind prescribed for the purposes of this sub-paragraph and, if regulations made for those purposes provide that information of that kind may only be disclosed under the regulations to prescribed persons, the disclosure is to a prescribed person.

#### Annotations:

**F54** 1984 NI 3

#### Local inquiries

77. The Department may cause a local inquiry to be held in any case in which the Department considers it appropriate for such an inquiry to be held either in connection with a provision of this Order or with a view to preventing or dealing with pollution or noise at any place.

#### Power of Department to assist certain projects

78. The Department may—

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(a) undertake, or contribute towards the cost of, investigations and research relevant to the problems of waste collection and disposal; and

(b) arrange for the publication of information relating to those problems.

*Art. 79 amends s.12 of 1929 c.13 (NI)*

*Art. 80, with Schedule 4, effects amendments*

*Art. 81(1), with Schedule 5, effects amendments; para.(2) amends s.2 of 1878 c.52.*

### **Adaptation of enactments to metric units**

**82.**—(1) The Department may by regulations amend<sup>F55</sup> the Alkali Act or the [<sup>F56</sup> Clean Air (Northern Ireland) Order 1981 ] by substituting an amount expressed in metric units for an amount not so expressed.

(2) Any amendments made under paragraph (1) shall be such as to preserve the effect of those Acts except to such an extent as in the opinion of the Department is necessary to obtain amounts expressed in convenient and suitable terms.

#### **Annotations:**

**F55** prosp. rep. by 1997 NI 18

**F56** 1981 NI 4

### **Power to give effect to international agreements**

**83.** The Secretary of State may by order make such modifications of this Order as he considers necessary or expedient with a view to enabling effect to be given to any provision made by or under any international agreement to which the Government of the United Kingdom is for the time being a party.

Legal proceedings

### **Miscellaneous provisions relating to legal proceedings**

**84.**—(1) Where a person appeals against a decision of a court of summary jurisdiction dismissing an appeal against a notice served under this Order which was suspended pending determination of that appeal, the notice shall again be suspended pending the determination of the appeal.

(2) Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of an offence under this paragraph whether or not proceedings for the offence are taken against any other person.

(3) Notwithstanding anything in<sup>F57</sup> Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981], proceedings for an offence under Article ...<sup>F58F59</sup> . . . 29 may be brought at any time—  
*Sub-para.(a) rep. by 1980 NI 6*

(b) in the case of an offence under Article 28, within six months from the date on which the litter thrown, dumped or otherwise deposited was last found to remain upon the place into or upon which it was thrown, dumped or deposited; or

(c) in the case of an offence under Article 29, within six months from the date on which the motor vehicle or thing which formed part of a motor vehicle was last found to remain upon the land on which it was abandoned.

(4) Where an appeal against a decision of a relevant council lies to a court of summary jurisdiction under this Order, the district council shall include in any document by which it notifies the decision

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to the person concerned a statement indicating that such an appeal lies as aforesaid and specifying the time within which it must be brought.

(5) Where on an appeal to any court against or arising out of a decision of a district council under this Order the court varies or reverses the decision the council shall act in accordance with the court's decision.

(6) A judge of any court<sup>F60</sup>, resident magistrate or lay magistrate] shall not be disqualified from acting in cases arising under this Order by reason of his being, as one of several ratepayers or as one of any other class of persons, liable in common with the others to contribute to or be benefited by any rate or fund out of which any expenses of a district council are to be defrayed.

**Annotations:**

**F57** 1981 NI 26

**F58** 1980 NI 6

**F59** 1994 NI 10

**F60** 2002 c.26

*Art. 85 rep. by 1997 NI 19*

## Supplemental

### Orders and regulations

**86.**—(1) <sup>F61</sup> . . . an order made by the Department under this Order and regulations made under this Order shall be subject to negative resolution.

(2) Orders made by the Department under this Order and regulations under this Order may contain incidental, supplementary and transitional provisions.

**Annotations:**

**F61** 1997 NI 19

### Transitional provisions, amendments and repeals

*Para.(1), with Schedule 6, effects amendments; para.(2), with Schedule 7, effects repeals*

(3) The Department may by order repeal or amend any provision of any local or private Act or of any statutory instrument as defined by section 1(c) of the Interpretation Act (Northern Ireland) 1954 if it appears to the Department that the provision is inconsistent with, or has become unnecessary or requires alteration in consequence of, any provision of this Order or corresponds to any provision repealed by this Order.

(4) An order under Article 1 may make such transitional provisions as appear to the Head of the Department to be necessary or expedient in connection with the provisions thereby brought into operation, including such adaptations of those provisions as appear to him to be necessary or expedient in consequence of the partial operation of this Order.

## SCHEDULES

### [F62] SCHEDULE 1

Article 43(3)

#### NOISE ABATEMENT ZONES

##### Annotations:

F62 1985 NI 15

1. Before making a noise abatement order the district council—
  - (a) shall serve on every owner, lessee and occupier (other than tenants for a month or any period less than a month) of any of the premises within the area and of a class to which the order will relate; and
  - (b) shall publish in the Belfast Gazette and once at least in each of two successive weeks in some newspaper circulating in the area to which the order will relate, a notice complying with the requirements set out in the following paragraph.
2. The requirements referred to in the preceding paragraph are that the notice—
  - (a) shall state that the district council proposes to make the order. and its general effect;
  - (b) shall specify a place in the district of the council where a copy of the order and of any map or plan referred to in it may be inspected by any person free of charge at all reasonable times during a period of not less than six weeks from the date of the last publication of the notice; and
  - (c) shall state that within the said period any person who will be affected by the order may by notice to the district council object to the making of the order.
- 3.—(1) If an objection is duly made to the district council within the said period, and is not withdrawn, the council shall not make the order without first considering the objection.
  - (2) The district council may make the order without complying with sub#paragraph (1) of this paragraph if it is satisfied that compliance is unnecessary having regard—
    - (a) to the nature of the premises to which the order will relate when it comes into force; or
    - (b) to the nature of the interests of the persons who have made objections which have not been withdrawn.
  - (3) Where the order varies or revokes a previous order, the district council may, in acting under this paragraph, disregard any objection to the order which in its opinion amounts in substance to an objection which was made to the previous order.
- 4.—(1) Subject to paragraph 5, an order shall come into operation on such date after it is made as may be specified in it.
  - (2) Except in the case of an order revoking an existing order or varying an existing order by excluding from it any specified class of premises, the date specified under sub#paragraph (1) shall not be a date earlier than one month from the date on which the order is made.
5. If, before the date on which the order is to come into operation, the district council—
  - (a) passes a resolution postponing the coming into operation of the order; and

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(b) publishes a notice stating the effect of the resolution in the Belfast Gazette and once at least in each of two successive weeks in a newspaper circulating in the area to which the order relates, the order shall, unless its coming into operation is again postponed under this paragraph, come into operation on the date specified in the resolution.]

*Schedule 2 rep. by 1981 NI 4*

*Schedule 3—Amendments*

*Schedule 4—Amendments*

*Schedule 5—Amendments*

*Schedule 6—Amendments*

*Schedule 7—Repeals*

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**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- art. 30(2)-(2B) substituted for art. 30(2) by 2011 c. 23 (N.I.) s. 8(2)
- art. 30(3) repealed by 2011 c. 23 (N.I.) s. 8(3) Sch. 4 Pt. 1
- art. 30(4) words repealed by 2011 c. 23 (N.I.) s. 8(4) Sch. 4 Pt. 1
- art. 31(1) words repealed by 2011 c. 23 (N.I.) s. 9(2)(b) Sch. 4 Pt. 1
- art. 31(1)(a) (b) substituted by 2011 c. 23 (N.I.) s. 9(2)(a)
- art. 31(2) repealed by 2011 c. 23 (N.I.) s. 9(3) Sch. 4 Pt. 1
- art. 36(1) words inserted by 2011 c. 23 (N.I.) s. 9(4)
- art. 36(1) words substituted by S.R. 2014/224 reg. 29(2)
- art. 37(a) repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5
- art. 38 39 repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5
- art. 41(9) words substituted by 2011 c. 23 (N.I.) Sch. 3 para. 9(1)
- art. 45(8) words substituted by 2011 c. 23 (N.I.) Sch. 3 para. 9(2)
- art. 49(1)(a) repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5
- art. 49(1)(c) words repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5
- art. 49(3) words repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5
- art. 49(5)(i) repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5
- art. 54(2) substituted by 2011 c. 23 (N.I.) Sch. 3 para. 9(3)
- art. 65(1) words substituted by 2011 c. 23 (N.I.) Sch. 3 para. 9(4)(a)(i)
- art. 65(1) words substituted by 2011 c. 23 (N.I.) Sch. 3 para. 9(4)(a)(ii)
- art. 65(4) words substituted by 2011 c. 23 (N.I.) Sch. 3 para. 9(4)(b)
- art. 65(6) words substituted by 2011 c. 25 (N.I.) Sch. 6 para. 19
- art. 66(7) words substituted by 2011 c. 25 (N.I.) Sch. 6 para. 20
- art. 69(1) words inserted by 2011 c. 23 (N.I.) Sch. 3 para. 9(5)
- art. 70 repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5
- art. 86(1) words inserted by 2011 c. 23 (N.I.) Sch. 3 para. 1(a)
- art. 86(1A) inserted by 2011 c. 23 (N.I.) Sch. 3 para. 1(b)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 4 para. 1 2 repealed by 2011 c. 23 (N.I.) Sch. 4 Pt. 5 (Amendment could not be applied. The relevant affected text is not available on legislation.gov)

**Commencement Orders yet to be applied to the Pollution Control and Local Government (Northern Ireland) Order 1978**

Commencement Orders bringing legislation that affects this Order into force:

- S.R. 2012/13 art. 2(1) Sch. 1 art. 2(1) Sch. 2 commences (2011 c. 23 (N.I.))
- S.R. 2015/49 art. 2 3 Sch. 1 commences (2011 c. 25 (N.I.))