



## 2011 CHAPTER 23

### **PART 7**

#### STATUTORY NUISANCES

##### **Statutory nuisances**

**63.**—(1) Subject to subsections (2) to (9), the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (g) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (h) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (i) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (j) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;

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*Status: Point in time view as at 18/01/2012. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, Section 63. (See end of Document for details)*

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- (k) any lake, watercourse, privy, urinal, cesspool, drain or ashpit which is so foul or in such a state as to be prejudicial to health or a nuisance;
  - (l) any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health;
  - (m) any private dwelling so overcrowded as to be prejudicial to the health of those living there or a nuisance;
  - (n) any other matter declared by any statutory provision to be a statutory nuisance.
- (2) Subsections (1)(b), (h) and (i) do not apply in relation to premises—
- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or
  - (b) occupied by or for the purposes of a visiting force.
- (3) Subsection (1)(b) does not apply to—
- (a) smoke emitted from a chimney of a private dwelling within a smoke control area,
  - (b) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,
  - (c) smoke emitted from a railway locomotive steam engine, or
  - (d) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.
- (4) Subsection (1)(c) does not apply in relation to premises other than private dwellings.
- (5) Subsection (1)(d) does not apply to steam emitted from a railway locomotive engine.
- (6) Subsection (1)(g) does not apply to insects that are wild animals included in Schedule 5 to the Wildlife (Northern Ireland) Order 1985 (NI 2) (animals which are protected at all times).
- (7) Subsection (1)(h) does not apply to artificial light emitted from—
- (a) an airport;
  - (b) harbour premises;
  - (c) railway premises;
  - (d) a bus station;
  - (e) a public service vehicle operating centre;
  - (f) a goods vehicle operating centre;

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(g) a lighthouse;

(h) a prison.

(8) Subsection (1)(i) does not apply to noise caused by aircraft other than model aircraft.

(9) Subsection (1)(j) does not apply to noise made—

(a) by traffic,

(b) by any naval, military or air force of the Crown or by a visiting force, or

(c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.

(10) In this Part—

“airport” has the meaning given by Article 2 of the Airports (Northern Ireland) Order 1994 (NI 1);

“bus station” has the same meaning as in Article 2(2) of the Licensing (Northern Ireland) Order 1996 (NI 22);

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“equipment” includes a musical instrument;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

“goods vehicle operating centre” means an operating centre within the meaning given by section 6(3) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (c. 2);

“harbour premises” means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition “harbour area” and “harbour operations” have the same meaning as in Part 3 of the Aviation and Maritime Security Act 1990 (c. 31);

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“lake” includes any pool, pond, or reservoir of any description;

“lighthouse” has the same meaning as in Part 8 of the Merchant Shipping Act 1995 (c. 21);

“noise” includes vibration;

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“owner”, in relation to any premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in that person's own right or as agent or trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let;

“person responsible”—

- (a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;
- (b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under the Vehicle Excise and Registration Act 1994 (c. 22) and any other person who is for the time being the driver of the vehicle;
- (c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“premises” includes land and, subject to subsection (16) and section 68(9), any vessel;

“prison” includes—

- (a) a young offenders centre within the meaning of section 33 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29);
- (b) a juvenile justice centre within the meaning of Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);

“private dwelling” means any building, or part of a building, used or intended to be used as a dwelling;

“public service vehicle operating centre” means a place at which public service vehicles are normally kept for the purposes of a business and for the purposes of this definition “public service vehicle” has the same meaning as in Article 2(2) of the Road Traffic (Northern Ireland) Order 1981 (NI 1);

“railway premises” means any land occupied by the railway undertaking within the meaning of section 55 of the Transport Act (Northern Ireland) 1967 (c. 37);

“smoke” includes soot, ash, grit and gritty particles emitted in smoke;

“street” means a street within the meaning of Article 3 of the Street Works (Northern Ireland) Order 1995 (NI 19);

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952 (c. 67);

“watercourse” has the same meaning as in the Drainage (Northern Ireland) Order 1973 (NI 1);

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and any expressions used in this section and in the Clean Air (Northern Ireland) Order 1981 (NI 4) (except for “owner”) have the same meaning in this section as in that Order and Article 2(3) of that Order shall apply for the interpretation of the expression “dark smoke” and the operation of this Part in relation to it.

(11) In this Part “relevant industrial, trade or business premises” means premises that are industrial, trade or business premises as defined in subsection (10), but excluding—

- (a) land used as arable, grazing, meadow or pasture land,
- (b) land used as osier land, reed beds or woodland,
- (c) land used for market gardens, nursery grounds or orchards,
- (d) land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the Department,
- (e) land included in an area of special scientific interest in relation to which a declaration under Article 28(1) of the Environment (Northern Ireland) Order 2002 (NI 7) has effect, and
- (f) any land covered by, and the waters of, any watercourse or lake.

(12) For the purposes of subsection (11)—

“agricultural” has the same meaning as in section 43(1) of the Agriculture Act (Northern Ireland) 1949 (c. 2);

“agricultural unit” means land which is occupied as a unit for agricultural purposes.

(13) In this Part “best practicable means” is to be interpreted by reference to the following provisions—

- (a) “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;
- (b) 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 structures;
- (c) the test is to apply only so far as compatible with any duty imposed by law;
- (d) the 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;

and, in circumstances where a code of practice under Article 51 of the Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19) (codes of practice for minimising noise) is applicable, regard shall also be had to guidance given in it.

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(14) A district council shall not without the consent of the Department institute summary proceedings under this Part in respect of a nuisance falling within paragraphs (b), (d), (e), (h) or (i) of subsection (1) if proceedings in respect thereof might be instituted under—

- (a) regulations under Article 4 of the Environment (Northern Ireland) Order 2002 (NI 7); or
- (b) the Industrial Pollution Control (Northern Ireland) Order 1997 (NI 18).

(15) The district of a district council which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (16) and section 68(9), this Part shall have effect, in relation to any area included in the district of a district council by virtue of this subsection—

- (a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and
- (b) with such other modifications, if any, as are prescribed in regulations made by the Department.

(16) A vessel powered by steam reciprocating machinery is not a vessel to which this Part applies.

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**Commencement Information**

**II** S. 63 in operation at 18.1.2012 for specified purposes by S.R. 2012/13, art. 2(1), Sch. 1

**Status:**

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**Changes to legislation:**

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