



## 2011 CHAPTER 23

### **PART 7** **N.I.**

#### STATUTORY NUISANCES

##### **Statutory nuisances** **N.I.**

**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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- (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.

**Commencement Information**

- I1** S. 63 in operation at 18.1.2012 for specified purposes by S.R. 2012/13, art. 2(1), Sch. 1
- I2** S. 63 in operation at 1.4.2012 in so far as not already in operation by S.R. 2012/13, art. 2(2), Sch. 2

**Duty of district council to inspect for statutory nuisance** **N.I.**

**64** It shall be the duty of every district council—

- (a) to cause its district to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 65 or 66, and
- (b) where a complaint of a statutory nuisance is made to it by a person living within its district, to take such steps as are reasonably practicable to investigate the complaint.

**Commencement Information**

- I3** S. 64 in operation at 1.4.2012 by S.R. 2012/13, art. 2(2), Sch. 2

**Summary proceedings for statutory nuisances** **N.I.**

**65.—(1)** Subject to subsection (3) where a district council is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the district of the

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council, the district council shall serve a notice (“an abatement notice”) imposing all or any of the following requirements—

- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence,
- (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) Subject to section 66(1), the abatement notice shall be served—

- (a) except in a case falling within paragraph (b) or (c), on the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, on the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

(3) Where a district council is satisfied that a statutory nuisance falling within paragraph (i) of section 63(1) exists, or is likely to occur or recur, in the district of the council, the council shall—

- (a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2); or
- (b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

(4) If a district council has taken steps under subsection (3)(b) and either of the conditions in subsection (5) is satisfied, the council shall serve an abatement notice in respect of the nuisance.

(5) The conditions are—

- (a) that the district council is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;
- (b) that the council is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the district of the council.

(6) The relevant period is the period of 7 days starting with the day on which the council was first satisfied that the nuisance existed, or was likely to occur or recur.

(7) The appropriate person is the person on whom the council would otherwise be required under subsection (3)(a) to serve an abatement notice in respect of the nuisance.

(8) A person served with an abatement notice may appeal against the notice to a court of summary jurisdiction within the period of 21 days beginning with the date on which the notice was served.

(9) A person on whom an abatement notice is served who without reasonable excuse contravenes or fails to comply with any requirement or prohibition imposed by the notice shall be guilty of an offence.

(10) Except in a case falling within subsection (11), a person who commits an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(11) A person who commits an offence under subsection (9) on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000.

(12) Subject to subsection (13), in any proceedings for an offence under paragraph (9) in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(13) The defence under subsection (12) is not available—

- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f), (g) or (i) of section 63(1) except where the nuisance arises on industrial, trade or business premises;
- (b) in the case of a nuisance falling within paragraph (h) of section 63(1) except where—
  - (i) the artificial light is emitted from industrial, trade or business premises; or
  - (ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;
- (c) in the case of a nuisance falling within paragraph (j) of section 63(1) except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;
- (d) in the case of a nuisance falling within paragraph (b) of section 63(1) except where the smoke is emitted from a chimney; and
- (e) in the case of a nuisance falling within paragraph (c) or (n) of section 63(1).



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(14) For the purposes of subsection (13)(b) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.

(15) For the purposes of subsection (14) “relevant sport” means a sport that is designated for those purposes by order made by the Department, and a sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

(16) In subsection (14) “domestic premises” means—

- (a) premises used wholly or mainly as a private dwelling, or
- (b) land or other premises belonging to, or enjoyed with, premises so used.

(17) In proceedings for an offence under subsection (9) in respect of a statutory nuisance falling within paragraph (i) or (j) of section 63(1) where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) 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 of the Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19) (construction sites, etc.); or
- (b) where the alleged offence was committed at a time when the premises were subject to a notice under Article 46 of that Order (reduction of noise levels), that the level of noise emitted from the premises at that time was not such as to constitute a contravention of the notice under that Article; or
- (c) where the alleged offence was committed at a time when the premises were not subject to a notice under Article 46 of that Order, and when a level fixed under Article 47 of that Order (new buildings liable to abatement order), applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.

(18) Paragraphs (b) and (c) of subsection (17) apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

**Commencement Information**

- I4** S. 65 in operation at 18.1.2012 for specified purposes by S.R. 2012/13, art. 2(1), Sch. 1
- I5** S. 65 in operation at 1.4.2012 in so far as not already in operation by S.R. 2012/13, art. 2(2), Sch. 2

**Abatement notice in respect of noise in the street** **N.I.**

- 66.—**(1) In the case of a statutory nuisance within section 63(1)(j) that—
- (a) has not yet occurred, or

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- (b) arises from noise emitted from or caused by an unattended vehicle or unattended machinery or equipment,

the abatement notice shall be served in accordance with subsection (2).

(2) The notice shall be served—

- (a) where the person responsible for the vehicle, machinery or equipment can be found, on that person;
- (b) where that person cannot be found or where the district council determines that this paragraph should apply, by fixing the notice to the vehicle, machinery or equipment.

(3) Where—

- (a) an abatement notice is served in accordance with subsection (2)(b) by virtue of a determination of the district council, and
- (b) the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within an hour of the notice being fixed to the vehicle, machinery or equipment,

a copy of the notice shall be served on that person accordingly.

(4) Where an abatement notice is served in accordance with subsection (2)(b) by virtue of a determination of the district council, the notice shall state that, if a copy of the notice is subsequently served under subsection (3), the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice.

(5) Where an abatement notice is served in accordance with subsection (2)(b), the person responsible for the vehicle, machinery or equipment may appeal against the notice under section 65(8) as if that person had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment.

(6) Section 65(9) shall apply in relation to a person on whom a copy of an abatement notice is served under subsection (3) as if the copy were the notice itself.

(7) A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with subsection (2)(b) shall be guilty of an offence, unless that person is the person responsible for the vehicle, machinery or equipment or does so with the authority of that person.

(8) A person who commits an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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**Commencement Information**

**I6** S. 66 in operation at 1.4.2012 by S.R. 2012/13, art. 2(2), Sch. 2

### Supplementary provisions **N.I.**

**67.**—(1) Subject to subsection (2), where more than one person is responsible for a statutory nuisance section 65 shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(2) In relation to a statutory nuisance within section 63(1)(j) for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), section 65(2)(a) shall apply with the substitution of “ any one of the persons ” for “the person”.

(3) In relation to a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, section 66 shall apply with the substitution—

- (a) in subsection (2)(a), of the words “ any of the persons ” for “the person” and of “ one such person ” for “that person”,
- (b) in subsection (2)(b), of the words “ such a person ” for “that person”,
- (c) in subsection (3), of the words “ any of the persons ” for “the person” and of “ one such person ” for “that person”,
- (d) in subsection (5), of the words “ any person ” for “the person”, and
- (e) in subsection (7), of the words “ a person ” for “the person” and of “ such a person ” for “that person”.

(4) Where a statutory 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 the district, the district council may act under section 65 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.

(5) Where an abatement notice has not been complied with the district council may, whether or not it takes proceedings for an offence under section 65(9), abate the nuisance and do whatever may be necessary in execution of the notice.

(6) Any expenses reasonably incurred by a district council in abating, or preventing the recurrence of, a statutory nuisance under subsection (5) may be recovered by it from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court consider fair and reasonable.

(7) If a district council is of opinion that proceedings for an offence under section 65(9) would afford an inadequate remedy in the case of any statutory nuisance, it may, subject to subsection (8), take proceedings in the High Court for

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the purpose of securing the abatement, prohibition or restriction of the nuisance, and the proceedings shall be maintainable notwithstanding the district council has suffered no damage from the nuisance.

(8) In any proceedings under subsection (7) in respect of a nuisance falling within paragraph (i) or (j) of section 63(1), it shall be a defence to prove that the noise was authorised by a notice under Article 40 or a consent under Article 41 (construction sites), of the Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19).

(9) The further supplementary provisions in Schedule 2 shall have effect.

#### Commencement Information

- I7** S. 67 in operation at 18.1.2012 for specified purposes by S.R. 2012/13, art. 2(1), Sch. 1
- I8** S. 67 in operation at 1.4.2012 in so far as not already in operation by S.R. 2012/13, art. 2(2), Sch. 2

#### Expenses recoverable from owner to be a charge on premises **N.I.**

**68.—**(1) Where any expenses are recoverable under section 67(6) from a person who is the owner of the premises there mentioned and the district council serves a notice on that person under this section—

- (a) the expenses shall carry interest, at such reasonable rate as the district council may determine, from the date of service of the notice until the whole amount is paid, and
- (b) subject to the following provisions of this section, the expenses and accrued interest shall be a charge on the premises.

(2) A notice served under this section shall—

- (a) specify the amount of the expenses that the district council claims is recoverable,
- (b) state the effect of subsection (1) and the rate of interest determined by the district council under that subsection, and
- (c) state the effect of subsections (4) to (6).

(3) On the date on which a district council serves a notice on a person under this section the council shall also serve a copy of the notice on every other person who, to the knowledge of the council, has an interest in the premises capable of being affected by the charge.

(4) Subject to any order under subsection (7)(b) or (c), the amount of any expenses specified in a notice under this section and the accrued interest shall be a charge on the premises—

- (a) as from the end of the period of 21 days beginning with the date of service of the notice, or

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(b) where an appeal is brought under subsection (6), as from the final determination of the appeal,  
until the expenses and interest are recovered.

(5) For the purposes of subsection (4), the withdrawal of an appeal has the same effect as a final determination of the appeal.

(6) A person served with a notice or copy of a notice under this section may appeal against the notice to the county court within the period of 21 days beginning with the date of service.

(7) On such an appeal the court may—

- (a) confirm the notice without modification,
- (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it, or
- (c) order that the notice is to be of no effect.

(8) In paragraph 1 of Schedule 11 to the Land Registration Act (Northern Ireland) 1970 (c. 18) after sub-paragraph (c) insert—

“(ca) section 68 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011; or”.

(9) In this section “premises” does not include a vessel.

**Commencement Information**

**I9** S. 68 in operation at 1.4.2012 by S.R. 2012/13, art. 2(2), Sch. 2

**Payment of expenses by instalments** **N.I.**

**69.—**(1) Where any expenses are a charge on premises under section 68, the district council may by order declare the expenses to be payable with interest by instalments within the specified period, until the whole amount is paid.

(2) In subsection (1)—

“interest” means interest at the rate determined by the council under section 68(1), and

“the specified period” means such period of 30 years or less from the date of service of the notice under section 68 as is specified in the order.

(3) Subject to subsection (5), the instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises.

(4) Any sums recovered from an occupier may be deducted by the occupier from the rent of the premises.

(5) An occupier shall not be required to pay at any one time any sum greater than the aggregate of—

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- (a) the amount that was due on account of rent at the date on which the occupier was served with a demand from the district council together with a notice requiring the occupier not to pay rent to the landlord without deducting the sum demanded, and
- (b) the amount that has become due from the occupier on account of rent since that date.

**Commencement Information**

**I10** S. 69 in operation at 1.4.2012 by S.R. 2012/13, art. 2(2), Sch. 2

**Summary proceedings by persons aggrieved by statutory nuisances** **N.I.**

**70.**—(1) A court of summary jurisdiction may act under this section on a complaint made by any person on the ground that that person is aggrieved by the existence of a statutory 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 or, in the case of a nuisance within section 63(1)(j), in the same street, 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;

and may also impose on the defendant a fine not exceeding level 5 on the standard scale.

(3) If the court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render premises unfit for human habitation, an order under subsection (2) may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purpose.

(4) Proceedings for an order under subsection (2) shall be brought—

- (a) except in a case falling within paragraph (b), (c) or (d), against the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, against the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises;
- (d) in the case of a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery

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or equipment, against the person responsible for the vehicle, machinery or equipment.

(5) Subject to subsection (6), where more than one person is responsible for a statutory nuisance, subsections (1) to (4) 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.

(6) In relation to a statutory nuisance within section 63(1)(j) for which more than one person is responsible (whether or not what any one of those persons is responsible for would by itself amount to such a nuisance), subsection (4)(a) shall apply with the substitution of “ each person responsible for the nuisance who can be found ” for “the person responsible for the nuisance”.

(7) In relation to a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, subsection (4)(d) shall apply with the substitution of “ any person ” for “the person”.

(8) Before instituting proceedings for an order under subsection (2) against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of the aggrieved person's intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.

(9) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (8) which is applicable is—

- (a) in the case of a nuisance falling within paragraph (i) or (j) of section 63(1), not less than 3 days' notice; and
- (b) in the case of a nuisance of any other description, not less than 21 days' notice;

but the Department may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

(10) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(11) Subject to subsection (12), in any proceedings for an offence under subsection (10) in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(12) The defence under subsection (11) is not available—

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- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f), (g) or (i) of section 63(1) except where the nuisance arises on industrial, trade or business premises;
- (b) in the case of a nuisance falling within paragraph (h) of section 63(1) except where—
  - (i) the artificial light is emitted from industrial, trade or business premises, or
  - (ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;
- (c) in the case of a nuisance falling within paragraph (j) of section 63(1) except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;
- (d) in the case of a nuisance falling within paragraph (b) of section 63(1) except where the smoke is emitted from a chimney;
- (e) in the case of a nuisance falling within paragraph (c) or (n) of section 63(1); and
- (f) in the case of a nuisance which is such as to render the premises unfit for human habitation.

(13) For the purposes of subsection (12)(b) a relevant sports facility has the same meaning as in section 65(14).

(14) If a person is convicted of an offence under subsection (10), 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.

(15) Where on the hearing of proceedings for an order under subsection (2) it is proved that the alleged nuisance existed at the date of the making of the complaint then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate that person for any expenses properly incurred by that person in the proceedings.

(16) If it appears to the court that neither the person responsible for the nuisance nor the owner or occupier of the premises or (as the case may be) the person responsible for the vehicle, machinery or equipment can be found the court 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 court would have ordered that person to do.



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**Commencement Information**

**I11** S. 70 in operation at 1.4.2012 by S.R. 2012/13, art. 2(2), Sch. 2

**Application of this Part to Crown** **N.I.**

**71.**—(1) Subject to the provisions of this section, the provisions of this Part and of regulations and orders made under it shall bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) No contravention by the Crown of any provision of this Part or of any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application of any district council charged with enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in subsection (2), the provisions of this Part and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) In this section any reference to the Crown includes the Crown in right of Her Majesty's Government in the United Kingdom.

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**Commencement Information**

**I12** S. 71 in operation at 1.4.2012 by S.R. 2012/13, art. 2(2), Sch. 2

**Changes to legislation:**

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