

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, Section 65. (See end of Document for details)



2011 CHAPTER 23

PART 7

STATUTORY NUISANCES

Summary proceedings for statutory nuisances

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 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—

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- (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.

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- (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).

(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

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(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

- I1** S. 65 in operation at 18.1.2012 for specified purposes by S.R. 2012/13, art. 2(1), **Sch. 1**
- I2** 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**

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