



2011 CHAPTER 23

PART 4

GRAFFITI AND OTHER DEFACEMENT

*Removal of graffiti and fly-posters*

**Defacement removal notices**

**31.—**(1) This section applies where a district council is satisfied—

- (a) that a relevant surface in the district of the council has been defaced by graffiti or any poster or placard the display of which contravenes regulations under Article 67 of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#), and
- (b) that the defacement is detrimental to the amenity of that district or is offensive.

(2) The council may serve a notice (a “defacement removal notice”) upon any person who is responsible for the surface imposing the requirement mentioned in subsection (3).

(3) That requirement is a requirement that the defacement be removed, cleared or otherwise remedied within a period specified in the notice being not less than 28 days beginning with the day on which the notice is served.

(4) If the requirement mentioned in subsection (3) is not complied with, the council or any person authorised by the council may remove, clear or otherwise remedy the defacement.

(5) In exercising the power under subsection (4) the council or any person authorised by the council may enter any land to the extent reasonably necessary for that purpose.

(6) A defacement removal notice must explain the effect of subsections (4) and (5) and sections 32 and 34.

(7) Where after reasonable enquiry a district council is unable to ascertain the name or address of any person who is responsible for a relevant surface, the council may—

- (a) affix a defacement removal notice to the surface, and
- (b) enter any land to the extent reasonably necessary for that purpose;

and that notice shall be treated as having been served upon a person responsible for the surface.

(8) In this section and in section 35 a “relevant surface” is any of the following surfaces, whether internal or external or open to the air or not—

- (a) the surface of any street or of any building, structure, apparatus, plant or other object in or on any street;
- (b) the surface of any land owned, occupied or controlled by a statutory undertaker or of any building, structure, apparatus, plant or other object in or on any such land;
- (c) the surface of any land owned, occupied or controlled by an educational institution (including its governing body) or of any building, structure, apparatus, plant or other object in or on any such land.

(9) But a surface is not a relevant surface unless—

- (a) in the case of a surface within subsection (8)(a), the street is public land;
- (b) in the case of a surface within subsection (8)(b) or (c)—
  - (i) the land is public land,
  - (ii) the surface is visible from public land, or
  - (iii) the surface is otherwise visible to members of the public using the services or facilities of the statutory undertaker or educational institution in question or any other statutory undertaker or educational institution.

(10) A person is responsible for a relevant surface if—

- (a) where it is the surface of any land (including a street), that person owns, leases, occupies, controls, operates or maintains the land, and
- (b) where it is the surface of any other thing mentioned in subsection (8), that person owns, leases, occupies, controls, operates or maintains the thing.

(11) In this section and in sections 32 to 35—

“defacement removal notice” has the meaning given by subsection (2),

“educational institution” has the meaning given by Article 2(2) of the [Litter \(Northern Ireland\) Order 1994 \(NI 10\)](#),

“graffiti” includes painting, writing, soiling, marking or other defacing by whatever means,

“public land” means land to which the public are entitled or permitted to have access with or without payment (including any street to which the public are so entitled or permitted),

“statutory undertaker” has the meaning given by Article 2(2) of the Litter (Northern Ireland) Order 1994,

“street” has the meaning given by Article 3(1) of the [Street Works \(Northern Ireland\) Order 1995 \(NI 19\)](#).

### **Recovery of expenditure**

**32.—**(1) A district council may recover from the person on whom a defacement removal notice was served expenditure reasonably incurred in exercise of the power under section 31(4).

(2) A district council may not recover expenditure from a person under subsection (1) unless it has served on that person a notice which sets out the amount of, and details of, the expenditure which it proposes to recover.

### **Guidance**

**33.—**(1) The Department shall issue guidance to district councils for the purposes of sections 31 and 32.

(2) A district council shall have regard to any guidance issued under this section.

### **Appeals**

**34.—**(1) A person on whom a defacement removal notice is served may, within the period of 21 days beginning with the day on which it is served, appeal against the notice to a court of summary jurisdiction on any of the following grounds.

(2) They are—

- (a) that the defacement is neither detrimental to the amenity of the district nor offensive,
- (b) that there is a material defect or error in, or in connection with, the notice,
- (c) that the notice should be served on another person.

(3) Where an appeal under subsection (1) is brought, the defacement removal notice shall be of no effect pending the final determination or withdrawal of the appeal.

(4) On the determination of such an appeal, the court of summary jurisdiction must do one of the following—

- (a) quash the notice,
- (b) modify the notice,
- (c) dismiss the appeal.

(5) Where the court modifies the notice or dismisses the appeal, it may extend the period specified in the notice.

(6) A person on whom a notice under section 32(2) is served may, within the period of 21 days beginning with the day on which it is served, appeal to a court of summary jurisdiction on the grounds that the expenditure which the district council is proposing to recover is excessive.

(7) On the determination of an appeal under subsection (6), the court of summary jurisdiction must do either of the following—

- (a) confirm that the amount which the council is proposing to recover is reasonable, or
- (b) substitute a lower amount as the amount which the council is entitled to recover.

#### **Exemption from liability in relation to defacement removal notices**

**35.—**(1) None of the persons mentioned in subsection (2) shall have any liability to any person responsible for the relevant surface for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of—

- (a) the power under subsection (4) of section 31 (including as provided for in subsection (5) of that section), or
- (b) the power under subsection (7) of that section.

(2) Those persons are—

- (a) in the case of the power mentioned in subsection (1)(a)—
  - (i) the district council and any employee of the council, and
  - (ii) any person authorised by the district council under section 31(4) and the employer or any employee of that person, and
- (b) in the case of the power mentioned in subsection (1)(b) the district council and any employee of the council.

(3) Subsection (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith;
- (b) to liability arising out of a failure to exercise due care and attention;

- (c) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998 (c. 42).
- (4) This section does not affect any other exemption from liability (whether at common law or otherwise).
- (5) Section 31(10) shall apply for the purposes of this section as it applies for the purposes of that section.

### **Removal or obliteration of graffiti, placards and posters**

**36.** For Article 18 of the [Local Government \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1985 \(NI 15\)](#) (removal of graffiti and fly posters) substitute—

#### **“Removal or obliteration of graffiti, placards and posters**

**18.—**(1) Subject to the following provisions of this Article, a district council may remove or obliterate—

- (a) any graffiti which, in the opinion of the council, is detrimental to the amenity of any land in its district;
- (b) any placard or poster which is displayed in its district and which, in the opinion of the council, is so displayed in contravention of regulations under Article 67 of the Planning (Northern Ireland) Order 1991.

(2) Where any graffiti, placard or poster to which sub-paragraph (a) or (b) of paragraph (1) applies identifies the person who displayed it or caused it to be displayed, a district council may give that person notice in writing—

- (a) that the council is of the opinion mentioned in that sub-paragraph in respect of the graffiti, placard or poster specified in the notice;
- (b) requiring that graffiti, placard or poster to be removed or obliterated within the period of 2 days beginning with the date of service of the notice; and
- (c) stating the effect of paragraph (3).

(3) Where—

- (a) a district council serves a notice on a person under paragraph (2) in relation to any graffiti, placard or poster, and
- (b) the person fails to remove or obliterate it within the period mentioned in that paragraph,

the council may recover summarily as a civil debt from that person the expenses it may reasonably incur in exercising its power under paragraph (1).

(4) Where—

- (a) any graffiti, placard or poster to which paragraph (1)(a) or (b) applies does not identify the person who displayed it or caused it to be displayed, but
- (b) the graffiti, placard or poster publicises the goods, services or concerns of an identifiable person,

paragraphs (2) and (3) have effect as if the reference in paragraph (2) to the person who displayed the graffiti, placard or poster or caused it to be displayed were a reference to the person whose goods, services or concerns are publicised.

(5) For the purpose of exercising any power under paragraph (1) a person authorised in writing by the council for the purposes of this Article may at any reasonable time enter any land if—

- (a) the land is unoccupied, and
- (b) it would be impossible to exercise the power without entering the land.

(6) Where any damage is caused to land or chattels in the exercise of any power under paragraph (1), compensation may be recovered from the district council exercising the power by any person suffering the damage (other than the person who displayed the graffiti, placard or poster or caused it to be displayed).

(7) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(8) Nothing in this Article authorises the removal or obliteration of any graffiti, placard or poster displayed—

- (a) within a building to which there is no public right of access; or
- (b) on land owned or occupied by a body established by or under a statutory provision.

(9) This Article and Article 19 are without prejudice to Article 67 of the Planning (Northern Ireland) Order 1991 (control of advertisements), and to Article 84 of that Order (enforcement of advertisement control), and to any regulations made under that Order by virtue of those Articles.”