



## 2011 CHAPTER 23

### PART 4

#### GRAFFITI AND OTHER DEFACEMENT

##### *Penalty notices for graffiti and fly-posting*

##### **Penalty notices for graffiti and fly-posting**

**26.—(1)** Where an authorised officer of a district council has reason to believe that a person has committed a relevant offence in the district of that council, the officer may give that person a notice offering that person the opportunity of discharging any liability to conviction for that offence by payment of a penalty in accordance with the notice.

(2) But an authorised officer shall not give a notice under subsection (1) if the officer considers that the commission of the relevant offence was motivated (wholly or partly) by hostility—

- (a) towards a person based upon that person's membership (or presumed membership) of a racial or religious group, or
- (b) towards members of a racial or religious group based on their membership of that group.

(3) In the case of a relevant offence under Article 84(2) of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#), an authorised officer shall not give a notice to a person under subsection (1) in relation to the display of an advertisement unless the officer has reason to believe that that person personally affixed or placed the advertisement to, against or upon the land or object on which the advertisement is or was displayed.

(4) Where a person is given a notice under subsection (1) in respect of an offence—

- (a) no proceedings shall be instituted for that offence (or any other relevant offence arising out of the same circumstances) before the expiration of the period of 14 days following the date of the notice, and
- (b) that person shall not be convicted of that offence (or any other relevant offence arising out of the same circumstances) if before the expiration of that period that person pays the penalty in accordance with the notice.

(5) A notice under subsection (1) must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(6) A notice under subsection (1) shall also state—

- (a) the period during which, by virtue of subsection (4), proceedings will not be instituted for the offence,
- (b) the amount of the penalty, and
- (c) the person to whom and the address at which the penalty may be paid.

(7) Without prejudice to payment by any other method, payment of a penalty in pursuance of a notice under subsection (1) 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 subsection (6)(c) at the address so mentioned.

(8) Where a letter is sent in accordance with subsection (7) 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.

(9) A notice under subsection (1) shall be in such form as the Department may by order prescribe.

(10) In this section—

“advertisement” has the meaning given by Article 2(2) of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#);

“authorised officer”, in relation to a district council, means—

- (a) an employee of the district council who is authorised in writing by the council for the purposes of giving notices under this section;
- (b) any person who, in pursuance of arrangements made with the council, has the function of giving such notices and is authorised in writing by the council to perform that function; and
- (c) any employee of such a person who is authorised in writing by the council for the purpose of giving such notices;

“racial group” has the meaning given by Article 5(1) of the [Race Relations \(Northern Ireland\) Order 1997 \(NI 4\)](#);

“relevant offence” means—

- (a) an offence under Article 33 of the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#) (interference with, or damage to, traffic signs), which involves only an act of defacement;
- (b) an offence under Article 87(1) of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) (painting, making marks or displaying advertisements on roads);
- (c) an offence under Article 84(2) of the [Planning \(Northern Ireland\) Order 1991](#) (displaying advertisement in contravention of regulations made under Article 67 of that Order);

“religious group” has the meaning given by Article 2(5) of the [Criminal Justice \(No. 2\) \(Northern Ireland\) Order 2004 \(NI 15\)](#).

(11) The definitions of “membership” and “presumed” in Article 2(5) of the [Criminal Justice \(No. 2\) \(Northern Ireland\) Order 2004 \(NI 15\)](#) shall apply for the purposes of subsection (2) as they apply for the purposes of Article 2(3) of that Order.

(12) In Article 87(11) of the [Roads \(Northern Ireland\) Order 1993](#) at the end add “and to an authorised officer of a district council (within the meaning of section 26 of the [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011](#)) acting in connection with an offence under paragraph (1).”.

### **Amount of penalty**

**27.—(1)** The amount of a penalty payable in pursuance of a notice under section 26(1)—

- (a) is the amount specified by a district council in relation to its district, or
- (b) if no amount is so specified, is £75.

(2) The district council to which a penalty is payable in pursuance of a notice under section 26(1) 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.

(3) The Department may by regulations make provision in connection with the powers conferred under subsections (1)(a) and (2).

(4) Regulations under subsection (3) may (in particular)—

- (a) require an amount specified under subsection (1)(a) to fall within a range prescribed in the regulations;
- (b) restrict the extent to which, and the circumstances in which, a district council can make provision under subsection (2).

(5) The Department may by order substitute a different amount for the amount for the time being specified in subsection (1)(b).

**Penalty notices: power to require name and address**

**28.—**(1) If an authorised officer of a district council proposes to give a person a notice under section 26(1), the officer may require the person to give the officer that person's name and address.

(2) A person who—

- (a) fails to give that person's name and address when required to do so under subsection (1), or
- (b) gives a false or inaccurate name or address in response to a requirement under that subsection,

commits an offence.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section "authorised officer" has the same meaning as in section 26.

**Penalty receipts**

**29.—**(1) The fixed penalty payable in pursuance of a notice under section 26(1) is payable to the district council whose authorised officer gave the notice.

(2) In any proceedings a certificate which—

- (a) purports to be signed by or on behalf of the clerk of the council, and
- (b) states that payment of a penalty payable in pursuance of a notice under section 26(1) was or was not received by a date specified in the certificate,

is evidence of the facts stated.

**Guidance**

**30.—**(1) The Department may issue guidance to district councils about—

- (a) the exercise of the discretion to give notices under section 26(1); and
- (b) the giving of such notices.

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

*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

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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;



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- (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.”

### *Aerosol paints*

#### **Sale of aerosol paint to children**

**37.—**(1) A person who sells an aerosol paint container to a person under the age of 18 commits an offence.

(2) In subsection (1) “aerosol paint container” means a device which—

(a) contains paint stored under pressure, and

(b) is designed to permit the release of the paint as a spray.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) It is a defence for a person charged with an offence under this section in respect of a sale to prove that—

(a) that person took all reasonable steps to determine the purchaser’s age, and

(b) that person reasonably believed that the purchaser was not under the age of 18.

(5) It is a defence for a person charged with an offence under this section in respect of a sale effected by another person to prove that that person (the defendant) took all reasonable steps to avoid the commission of an offence under this section.

(6) It shall be the duty of a district council—

(a) to consider, at least once in every period of 12 months, the extent to which it is appropriate for it to carry out a programme of enforcement action in relation to this section, and

(b) to the extent that it considers it appropriate to do so, carry out such a programme.

(7) For the purposes of subsection (6), a programme of enforcement action in relation to this section is a programme involving all or any of the following—

(a) the bringing of prosecutions in respect of offences under this section;

(b) the investigation of complaints in respect of alleged offences under this section;

- (c) the taking of other measures intended to reduce the incidence of offences under this section.

### *Advertisements*

#### **Unlawful display of advertisements**

**38.**—(1) Article 84 of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#) (enforcement of advertisement control) shall be amended in accordance with subsections (2) and (3).

(2) In paragraph (3) for “that it was displayed without his knowledge or consent” substitute “either of the matters specified in paragraph (4)”.

(3) After that paragraph insert—

“(4) The matters are that—

- (a) the advertisement was displayed without his knowledge; or
- (b) he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.”.

(4) Article 87 of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) (control of advertisements, etc.) is amended in accordance with subsections (5) and (6).

(5) In paragraph (9) for “that it was displayed without his knowledge or consent” substitute “either of the matters specified in paragraph (9A)”.

(6) After that paragraph insert—

“(9A) The matters are that—

- (a) the advertisement was displayed without his knowledge; or
- (b) he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal.”.

(7) This section does not have effect in relation to an offence committed, or alleged to have been committed, before the commencement of this section.

### *Supplementary*

#### **Power of district councils to obtain information**

**39.**—(1) Subject to subsection (2), a district council may serve on any person a notice requiring that person to supply 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 Part.

(2) Regulations may restrict the information which may be required under subsection (1) and determine 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 under this section, or

(b) in supplying any information in compliance with such a notice, makes any statement which that person knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.