

*These notes refer to the Clean Neighbourhoods and Environment Act
(Northern Ireland) 2011 (c.23) which received Royal Assent on 4 May 2011*

Clean Neighbourhoods and Environment Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Noise

Chapter 1: Audible Intruder Alarms

Section 48 – Designation of alarm notification areas

This section sets out the steps that must be followed by a council wishing to designate an area as an alarm notification area.

Section 49 – Withdrawal of designation

This section enables a district council to withdraw a designation made under section 48 and sets out the steps for doing so.

Section 50 – Notification of nominated key-holders

This section requires that the responsible person in respect of premises with an audible intruder alarm within an alarm notification area must nominate a key-holder for the premises and then notify the district council of that key-holder's name, address and telephone number. Subsection (4) makes it an offence for the responsible person to fail either to nominate or to notify within the specified time period.

Section 51 – Nomination of key-holders

This section (subsections (3) to (5)) describes who is eligible to be nominated as a key-holder. Subsection (6) provides that where a key-holder ceases to satisfy certain requirements, the responsible person must nominate a replacement. The responsible person would then, under section 50, have to notify the details of the new key-holder to the council. Again, failure either to nominate or notify would be an offence.

Section 52 – Offences under section 50: fixed penalty notices

This section (subsections (1) and (2)) enables an “authorised officer” of a district council to issue a fixed penalty notice where it appears to that officer that an offence of failing to nominate or notify details of a key-holder has been committed, offering the offender an opportunity to discharge, by payment of a fixed penalty (within 14 days), any liability to conviction for the offence. Who qualifies as an authorised officer is described in subsection (10). The rest of the section sets out the effects of the fixed penalty notice, what information such a notice should contain, and procedures for payment.

Section 53 – Amount of fixed penalty

This section (subsections (2) and (3)) enables district councils to specify the amount of a fixed penalty for an offence committed in their district. Where no amount is set by the council, the penalty amount will be £75. In either case, a district council may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify. Subsections (4) and (5) give power to the Department to make regulations governing the power of district council to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent and circumstances in respect of which a council may provide for reduced early payment). Under subsection (6) the Department may (by order) substitute the figure of £75 referred to above with a new amount.

Section 54 – Use of fixed penalty receipts

This section allows a district council to retain the receipts arising from fixed penalty notices issued pursuant to section 52, and specifies the functions for which the receipts may be used.

Section 55 – Fixed penalty notices: power to require name and address

This section provides an authorised officer of a district council with the power to require the name and address of a person if the officer proposes to give that person a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

Section 56 – Powers of entry

This section (subsections (3) and (4)) provides an authorised officer of a district council with a power of entry (but not by force) in order to silence an intruder alarm in or on premises in the council’s district where the officer is satisfied that the conditions described in subsection (2) are met.

Section 57 – Warrant to enter premises by force

This section provides that an authorised officer may enter premises using reasonable force if necessary to silence an alarm following the issue of a warrant by a lay magistrate.

Section 58 – Powers of entry: supplementary

This section makes supplementary provision where an officer of a district council enters any premises to silence an alarm either under section 56 or under a warrant issued under section 57. This includes provision allowing an officer to take other persons with him or her to the premises (subsection (3)), requiring the officer (if the premises are unoccupied or the occupier is temporarily absent) to leave a notice at the premises stating what action has been taken and securing the premises (subsection (5)), allowing a district council to recover expenses reasonably incurred by it in connection with entering the premises and silencing the alarm (subsection (7)) and ensuring that action taken in good faith by the council under these powers does not subject it to any liability (subsection (9)). Subsection (10) provides that subsection (9) does not apply so as to prevent an award of damages 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.

Section 59 – Interpretation of this Chapter

This section relates to the interpretation of Chapter 1 of Part 6 of the Act.

Chapter 2: Amendments to the Noise Act 1996

Section 60 – Dealing with noise at night

This section amends the Noise Act 1996, which currently gives powers to district councils to deal with noise at night (by way of warning notices, fixed penalties etc.). These powers have previously only applied to a district council in Northern Ireland that adopts them in its district. Subsection (2) confers these powers on all councils. Subsection (3) removes the previously associated duty (once the powers had been adopted) to take reasonable steps to investigate a complaint, and substitutes a discretionary power to take such steps in response to a complaint. Subsection (4) removes a provision that would have applied to a situation where one district council had adopted powers under the Act but a neighbouring council had not, as this will no longer apply.

Section 61 – Noise offences: fixed penalty notices

This section makes various amendments to the provisions in the Noise Act 1996 relating to fixed penalties. The Noise Act 1996, in its application to Northern Ireland, currently permits a district council to deal with noise exceeding permitted levels only from dwellings at night-time. An authorised officer of a district council can, under section 8 of that Act, give a person who the officer believes has committed an offence under the Act a fixed penalty notice, offering that person the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.

Subsection (2) introduces new sections 8A and 8B to the Noise Act 1996. Under the new section 8A(2)(a) a district council will be able to set the level of the fixed penalty (in lieu of liability to conviction for an offence) in its district. The

fixed penalty is set at £100 where no amount is specified by a district council (which is the amount of the penalty under the current regime). In either case, a district council may treat a penalty as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify. Section 8A(3) provides that where the alleged offence relates to licensed premises, the amount of the fixed penalty will be fixed at £500 (with no power for a district council to set an alternative). New sections 8A(5) and (6) give powers to the Department to make regulations governing the power of district councils to set local fixed penalty rates (e.g. by specifying a range within which the amount must fall or limiting the extent and circumstances in respect of which a district council may provide for reduced early payment). The new section 8B provides an authorised officer of a district council with the power to require the name and address of a person if the officer proposes to give that person a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

Subsection (3) amends section 9 of the Noise Act 1996 and specifies the qualifying functions for which a district council can use the receipts from fixed penalty notices. The new section 9(4B) to (4F) makes further provision regarding the use of fixed penalty receipts and includes a power for the Department to make regulations about how district councils can use their fixed penalty receipts.

Section 62 – Extension of Noise Act 1996 to licensed premises etc.

This section and Schedule 1 extend the powers under the Noise Act 1996 for a district council to take action to deal with noise at night (formerly restricted to noise from dwellings) to premises as specified in paragraph 3(2) of the said Schedule 1.