

## SCHEDULES

### SCHEDULE 2

Section 67(9).

#### STATUTORY NUISANCES: SUPPLEMENTARY PROVISIONS

##### *Appeals to a court of summary jurisdiction*

1.—(1) This paragraph applies in relation to appeals under section 65(8) against an abatement notice to a court of summary jurisdiction.

(2) Part 7 of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) shall apply to such appeals.

(3) An appeal against any decision of a court of summary jurisdiction in pursuance of an appeal to which this paragraph applies shall lie to the county court at the instance of any party to the proceedings in which the decision was given.

(4) The Department may make regulations as to appeals to which this paragraph applies and without prejudice to the generality of this sub-paragraph the regulations may in particular—

- (a) prescribe the cases in which an abatement notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
- (b) prescribe the cases in which the decision on appeal may in some respects be less favourable to the appellant than the decision from which the appeal is brought;
- (c) prescribe the cases in which the appellant may claim that an abatement notice should have been served on some other person and prescribe the procedure to be followed in those cases.

##### *Powers of entry etc.*

2.—(1) Subject to sub-paragraph (2), any person authorised by a district council may, on production (if so required) of that person's authority, enter any premises at any reasonable time—

- (a) for the purpose of ascertaining whether or not a statutory nuisance exists;  
or
- (b) for the purpose of taking any action, or executing any work, authorised or required by Part 7.

(2) Admission by virtue of sub-paragraph (1) to any premises used wholly or mainly for residential purposes shall not except in an emergency be demanded as of right unless 24 hours notice of the intended entry has been given to the occupier.

(3) If it is shown to the satisfaction of a lay magistrate on complaint in writing—

- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of emergency, or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry into the premises for the purpose for which entry is required,

the lay magistrate may by warrant authorise the district council by any authorised person to enter the premises, if need be by force.

(4) An authorised person entering any premises by virtue of sub-paragraph (1) or a warrant under sub-paragraph (3) may—

- (a) take to the premises such other persons and such equipment as may be necessary;
- (b) carry out such inspections, measurements and tests as the authorised person considers necessary for the discharge of any of the district council's functions under Part 7; and
- (c) take away such samples or articles as that person considers necessary for that purpose.

(5) On leaving any unoccupied premises entered by virtue of sub-paragraph (1) or a warrant under sub-paragraph (3) the authorised person shall leave them as effectually secured against trespassers as they were found.

(6) A warrant issued in pursuance of sub-paragraph (3) shall continue in force until the purpose for which the entry is required has been satisfied.

(7) Any reference in this paragraph to an emergency is a reference to a case where the person requiring entry has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause and to effect a remedy.

**3.—(1)** Any person authorised by a district council may on production (if so required) of that person's authority—

- (a) enter or open a vehicle, machinery or equipment, if necessary by force, or
  - (b) remove a vehicle, machinery or equipment from a street to a secure place,
- for the purpose of taking any action, or executing any work, authorised by or required under Part 7 in relation to a statutory nuisance within section 63(1)(j) caused by noise emitted from or caused by the vehicle, machinery or equipment.

(2) On leaving any unattended vehicle, machinery or equipment entered or opened under sub-paragraph (1), the authorised person shall (subject to sub-paragraph (3)) leave it secured against interference or theft in such manner and as effectually as it was found.

(3) If the authorised person is unable to comply with sub-paragraph (2), that person shall for the purpose of securing the unattended vehicle, machinery or equipment either—

- (a) immobilise it by such means as are considered expedient, or
- (b) remove it from the street to a secure place.

(4) In carrying out any function under sub-paragraph (1), (2) or (3), the authorised person shall not cause more damage than is necessary.

(5) Before a vehicle, machinery or equipment is entered, opened or removed under sub-paragraph (1), the district council shall notify the police of the intention to take action under that sub-paragraph.

(6) After a vehicle, machinery or equipment has been removed under sub-paragraph (1) or (3), the district council shall notify the police of its removal and current location.

(7) Notification under sub-paragraph (5) or (6) may be given to the police at any police station in the district of the district council.

(8) For the purposes of section 67(6), any expenses reasonably incurred by a district council under sub-paragraph (2) or (3) shall be treated as incurred by the council under section 67(5) in abating or preventing the recurrence of the statutory nuisance in question.

#### *Offences relating to entry*

4.—(1) A person who wilfully obstructs any person acting in the exercise of any powers conferred by paragraph 2 or 3 shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) A person who discloses any information relating to any trade secret obtained in the exercise of any powers conferred by paragraph 2 shall, unless the disclosure was made in the performance of that person's duty or with the consent of the person having the right to disclose the information, be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### *Default powers*

- 5.—(1) This paragraph applies to the following functions of a district council—
- (a) its duty under section 64 to cause its district to be inspected to detect any statutory nuisance which ought to be dealt with under section 65 or sections 65 and 66; and

(b) its powers under paragraph 2 or 3.

(2) If the Department is satisfied that any district council has failed, in any respect, to discharge a function to which this paragraph applies which it ought to have discharged, it may make an order declaring the council to be in default.

(3) An order made under sub-paragraph (2) which declares a council to be in default may, for the purpose of remedying the default, direct the council (“the defaulting council”) to perform the function specified in the order and may specify the manner in which and the time or times within which the function is to be performed by the council.

(4) If the defaulting council fails to comply with any direction contained in such an order the Department may, instead of enforcing the order by mandamus, make an order transferring to itself the function of the council specified in the order.

(5) Where the function of a defaulting council is transferred under sub-paragraph (4), the amount of any expenses which the Department certifies were incurred by it in performing the function shall on demand be paid to it by the defaulting council.

(6) Any expenses required to be paid by a defaulting council under sub-paragraph (5) shall be defrayed by the council in the same manner, and shall be debited to the same account, as if the function had not been transferred and the expenses had been incurred by the council in performing them.

(7) The [Statutory Rules \(Northern Ireland\) Order 1979 \(NI 12\)](#) shall not apply to any order under this paragraph.

#### *Protection from personal liability*

6. Nothing done by, or by a member of, a district council or by an officer of or other person authorised by a district council shall, if done in good faith for the purpose of executing Part 7, subject that person personally to any action, liability, claim or demand whatsoever (other than any liability under Articles 19 or 20 of the [Local Government \(Northern Ireland\) Order 2005 \(NI 18\)](#) (powers of local government auditors)).

#### *Statement of right of appeal in notices*

7. Where an appeal against a notice served by a district council lies to a court of summary jurisdiction by virtue of section 65, it shall be the duty of the council to include in that notice a statement indicating that such an appeal lies to a court of summary jurisdiction and specifying the time within which it must be brought.