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Environment

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STATUTORY NUISANCES

**Guidance to District Councils on Part 7
(Statutory Nuisances) of the Clean**

Neighbourhoods and Environment Act (Northern Ireland) 2011

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1.0 INTRODUCTION

1.1 This document is provided to assist with the application of the new and amended statutory nuisance provisions in Part 7 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (the 2011 Act). This guidance is aimed at district councils, particularly Environmental Health Officers, who enforce statutory nuisance legislation.

2.0 OVERVIEW OF THE EXISTING STATUTORY NUISANCES REGIME

2.1 The current statutory nuisance regime has its roots in 19th century public health protection legislation. During the 19th century, legislation was implemented to address the growing concerns around communicable infectious diseases such as cholera and typhoid. The Public Health (Ireland) Act 1878 was the result of a cholera pandemic in the mid 1800s. The improved sanitary conditions that ensued lead to a change of focus, with nuisance provisions being used specifically to deal with conditions that pose a risk to human health or harm to the amenities of a neighbourhood.

2.2 Despite having been amended from time to time the definition of what can be considered a statutory nuisance and the enforcement powers available to district councils have not kept pace with developments in statutory nuisance legislation applying elsewhere in the United Kingdom.

3.0 OVERVIEW OF THE NEW STATUTORY NUISANCES REGIME

3.1 There are two ways of addressing a problem of nuisance in Northern Ireland: either through the common law (i.e. law made by the Courts in successive judgements) or, if applicable, through the statutory provisions in the 2011 Act. Nuisance generally entails some form of damage to, or unreasonable and substantial interference with a person's use or enjoyment of, property. However, only certain matters may constitute a statutory nuisance under the 2011 Act and the various matters which may constitute a statutory nuisance are set down in section 63. In each case, the matter must either be a nuisance in its own right or be prejudicial to health, in order to be a statutory nuisance. As the principle of statutory nuisance has been in existence for more than 100 years there has been a significant amount of case law relating to specific

interpretation of the legislation. Whilst a lot of this case law is based on English law it serves as a guide to previous interpretation of the law and should be considered when considering possible statutory nuisance conditions in Northern Ireland.

3.2 Part 7 of the 2011 Act contains the main provisions on statutory nuisances. It enables district councils and individuals to take action to secure the abatement of a statutory nuisance. District councils have a duty under section 64 to inspect their district to detect whether a nuisance exists or is likely to recur. A council must also take such steps as are reasonably practicable to investigate any complaint of statutory nuisance from a person living in its district. Where a district council is satisfied that a statutory nuisance exists, or is likely to occur or recur, it **must** serve an abatement notice under section 65 on the person responsible. The notice should impose all or any of the following requirements:

- (i) the abatement of the nuisance or prohibition or restriction of its occurrence or recurrence;
- (ii) the carrying out of such works and other steps necessary for any of those purposes.

3.3 The person on whom the notice is served may appeal (subsection 68(6)) to a court of summary jurisdiction within 21 days of the date on which he is served with the notice. The detail of the appeal procedure is included in Schedule 2 to the 2011 Act and in the Regulations made under that Schedule: the Statutory Nuisances (Appeals) Regulations (Northern Ireland) 2012 (draft attached at Appendix A).

3.4 Failure to comply with the terms of an abatement notice without reasonable excuse may result in prosecution in a court of summary jurisdiction. On summary conviction (subsection 63(10)) a person may be liable to a fine not exceeding level five on the standard scale (presently £5,000) plus an additional daily fine of an amount equal to one tenth of that level (i.e. £500) for each day on which the offence continues after conviction. Where the conviction is for an offence on industrial, trade or business premises, (subsection 63(11)) the maximum fine on summary conviction is £20,000.

3.5 It is a defence (subsection 63(12)) against liability for the failure to comply with (or contravention of) an abatement notice to prove that the “best practicable means” (see paragraphs 5.27 to 5.32 below) were used to prevent or counteract the effects of the nuisance. However, this defence is not available in the case of certain nuisances and these are listed in subsection 65(13).

3.6 If an abatement notice is not complied with, a district council may take the necessary steps (subsection 67(5)) to abate the nuisance itself (including in the case of noise nuisance, seizure of the equipment causing the noise) and may recover the costs which were reasonably incurred in doing this from the responsible person.

3.7 Section 70 of the 2011 Act also makes provision for any person aggrieved by the existence of a statutory nuisance to make an application to a court of summary jurisdiction which, if satisfied that a nuisance exists, shall make an order requiring the abatement of the nuisance and/or the prevention of its recurrence.

4.0 CATEGORIES OF STATUTORY NUISANCES IN THE 2011 ACT – SUBSECTIONS 63(1)(a) to (n)

4.1 Part 7 of the 2011 Act updates the current law on statutory nuisances in Northern Ireland by bringing it broadly into line with that which applies in England and Wales (by virtue of the Environmental Protection Act 1990), thereby giving local authorities/district councils throughout the UK, similar powers to deal with statutory nuisances. It also adds two entirely new categories of statutory nuisance namely insects and artificial light (which were added to the statutory nuisance regime in England and Wales by virtue of the Clean Neighbourhoods and Environment Act 2005). The statutory nuisance regime outlined in the 2011 Act now covers the following areas.

4.2 “***Any premises in such a state as to be prejudicial to health or a nuisance***” (subsection 63(1)(a)) - This provision deals largely with conditions at dwellings but, because premises is defined in subsection 63(10), it also includes land and vessels. It covers industrial, trade and business premises but in this case there is a statutory defence that the “best practicable means” have been used (see paragraphs 5.27 to 5.32 below). It is important to note that it is the condition of the premises as a whole, not individual defects, that confer a nuisance but a premises may be a

statutory nuisance as a result of the cumulative impact of a number of minor defects or one major defect. In addition, it is the physical condition of the premises and not the way the premises are being or have been used that is relevant. The design or layout of premises alone cannot render the premises a nuisance. Also, the presence of inadequate sound insulation that permits external noise to penetrate has been held not to be a nuisance under this limb.

4.3 “**Smoke emitted from premises so as to be prejudicial to health or a nuisance**” (subsection 63(1)(b)) - This provision sits alongside many other legislative controls over smoke. Smoke is defined in subsection 63(10) as including soot, ash, grit and gritty particles emitted in smoke and has been held to include the smell of smoke. There are a number of exemptions from this provision as they are covered by other legislation. These are premises occupied on behalf of the Crown or a visiting force for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence and: -

- (i) smoke emitted from a chimney of a private dwelling within a smoke control area;
- (ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land;
- (iii) smoke emitted from a railway locomotive steam engine; or
- (iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

The term “industrial or trade premises” occurs at several points in the nuisance provisions and is defined in subsection 63(10) as: -

“premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as

well as where they are used for the purposes of manufacturing”.

In effect this provision mainly covers smoke from domestic premises (other than from chimneys in a smoke control area) and smoke other than dark smoke from industrial and trade premises. The smoke could either be such that it threatens or injures health or is a nuisance due to interference with enjoyment of property or quality of life. By virtue of subsection 63(14), a district council cannot take summary proceedings (though it may issue an abatement notice), without the Department's consent where action could be taken under regulations made under Article 4 of the Environment (Northern Ireland) Order 2002, or the Industrial Pollution Control (Northern Ireland) Order 1997. There is a statutory defence that the “best practicable means” have been used (see paragraphs 5.27 to 5.32 below) where smoke is emitted from a chimney.

4.4 “Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance” (subsection 63(1)(c))

- This provision applies only to private dwellings. Fumes and gases are defined in subsection 63(10) as: -

(i) “fumes” means any airborne solid matter smaller than dust; and

(ii) “gas” includes vapour and moisture precipitated from vapour.

The definition of fumes includes solids that are smaller than dust (dust can be taken as solids suspended in air with a particle size between 1 and 76 microns) and in the definition of gas, a vapour includes liquid suspended in air. Perhaps the most common use of this provision would be to deal with exhaust fumes from heating equipment affecting a neighbouring property, it could also be used to control somebody respraying cars at home causing nuisance from vapour carry-over. There is also the consideration that although smells are not specifically included, smell is caused by either liquid or solid droplets carried in air and hence fall within this description. Whilst there is specific provision for odour in subsection 63(1)(d), this only applies to industrial and trade premises. The provisions for fumes and gases could therefore be used to deal with odours produced from private dwellings such as

cooking smells. The nuisance provisions provide a number of methods for dealing with smell from domestic premises – under subsection 63(1)(a) caused by the state of the premises, under subsection 63(1)(b) when associated with smoke, under subsection 63(1)(e) when associated with accumulations or deposits, and finally under this subsection as fumes or gases.

4.5 “Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance” (subsection 63(1)(d)) – This provision applies only to industrial and trade or business premises. It is not restricted to emissions from, but to arisings on the premises and, therefore, could be used where health of persons at the premises is affected. Dust does not include dust from a chimney as an ingredient of smoke and also, by virtue of subsection 63(3)(c), does not apply to steam emitted from a railway locomotive steam engine. Whilst the majority of the terms used are self-explanatory the term effluvia is not in common usage. In earlier legislation this term had been held to include smell, but the term is wider than this. Effluvia suggests something being emitted and a common dictionary definition is “a slight or invisible exhalation or vapour, especially one that is disagreeable or noxious”. There is a statutory defence that the “best practicable means” have been used (see paragraphs 5.27 to 5.32 below). Again, by virtue of subsection 63(14), a district council cannot take summary proceedings (though it may issue an abatement notice), without the Department’s consent where action could be taken under regulations made under Article 4 of the Environment (Northern Ireland) Order 2002, or the Industrial Pollution Control (Northern Ireland) Order 1997.

Note: To avoid any potential duplication/conflict with action being taken by the Health and Safety Executive for Northern Ireland under the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003, councils may wish to liaise with colleagues in the HSENI as the 2003 Regulations may take precedence in the workplace over the statutory nuisance provisions in this subsection

4.6 “Any accumulation or deposit which is prejudicial to health or a nuisance” (subsection 63(1)(e)) – The terms used in this provision are not defined but deposit suggests an individual instance whereas accumulation suggests the result of a number of

deposits. This provision can be used where health of persons at the premises where the accumulation or deposit occurs is affected. It is a wide-ranging provision and has been subject to much previous case law. The accumulation of inert materials cannot be prejudicial to health because of the risk of physical injury, but there must be an underlying threat to health from disease. However, where the accumulation is considered to be a nuisance, action could still be taken. The fact that an accumulation has existed for a period of time does not give a right for it to continue. There is a statutory defence that the “best practicable means” have been used where the accumulation or deposit occurs on industrial or trade premises (see paragraphs 5.27 to 5.32 below). Again, by virtue of subsection 63(14), a district council cannot take summary proceedings (though it may issue an abatement notice), without the Department’s consent where action could be taken under regulations made under Article 4 of the Environment (Northern Ireland) Order 2002, or the Industrial Pollution Control (Northern Ireland) Order 1997.

4.7 “Any animal kept in such a place or manner as to be prejudicial to health or a nuisance” (subsection 63(1)(f)) – In this provision, the term animal has a wide meaning. The term “kept” is also important as it is likely that this implies a positive action whereby there is intent for the animal to be present rather than just animals gaining access to a place (such as feral pigeons entering buildings). The animals do not have to be permanently at the premises, but may be there for a short time. In this provision the reference is to a “place”, which is a wide term and could include any type of premises or public place. It might be thought that if animals were being kept on premises and the ensuing noise amounted to a statutory nuisance then subsection 63(1)(f) should be used for enforcement. However, as this is a type of noise nuisance, subsection it is recommended that for noisy animals the provisions of subsection 63(1)(i) are more appropriate. There is a key issue in respect of this provision as to the extent that it applies where the animals are away from the immediate control of their keeper. There is a statutory defence that the “best practicable means” have been used where the nuisance occurs on industrial or trade premises (see paragraphs 5.27 to 5.32 below).

4.8 “Any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance” (subsection 63(1)(g)); and

“Artificial light emitted from premises so as to be prejudicial to health or a nuisance” (subsection 63(1)(h)) - Assessing complaints of statutory nuisance from insects and statutory nuisance from artificial light from premises follow the same regime as for other statutory nuisances. That is, it is initially for an Environmental Health Officer to assess on the evidence available whether or not a statutory nuisance exists, or may occur or recur, on a case-by-case basis. Not least because it will depend on their effects, there are no objective and set levels of insect infestation or artificial light above which a statutory nuisance is or may be caused, and below which it is not. **Annex 1 and Annex 2 to this guidance provides further advice on statutory nuisance from insects and from artificial light.**

4.9 **“Noise emitted from premises so as to be prejudicial to health or a nuisance” (subsection 63(1)(i))** – Noise from premises is one of the most important categories within the new statutory nuisances regime. It includes vibration (subsection 63(10)), but does not apply to noise caused by aircraft other than model aircraft (subsection 63(8)). This provision includes the term “emitted from premises” and, therefore, must affect premises other than those at which the noise is generated. Premises means a separate unit of occupation, therefore loud music emanating from a neighbouring flat in the same building would be caught by this subsection. However, tenants could not use this subsection for noise from a faulty water supply system within their own flat. It can be invoked in respect of noise originating on open ground, provided that it is possible to define distinct areas from which it is emitted and into which it penetrates. Such noise might be from sound amplification systems (used either in public places or in private gardens), or noise from off-road sporting activities caused by motorcycles/quad bikes etc. The noise from the ordinary use of a dwelling house cannot amount to a statutory nuisance even though inadequate sound insulation may create problems for neighbours. The defence of best practicable means applies to industrial, trade or business premises (see paragraphs 5.27 to 5.32 below).

4.10 **“Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street” (subsection 63(1)(j))** – This provision does not apply to traffic noise i.e., the cumulative noise of vehicles moving or waiting to move along the highway, by any naval, military or air

force of the Crown or by a visiting force, or by a political demonstration or a demonstration supporting or opposing a cause or campaign (subsections 63(9)(a) to (c)). It applies to individual vehicles and might include, for example: -

- Refrigerated lorries waiting to deliver goods
- Compressors used to dig up the street
- Vehicles using reversing beepers
- Car alarms
- Generators
- Coaches, buses or other vehicles parked with engines running.

NB: This list is not exhaustive

There is a statutory defence that the “best practicable means” have been used where the noise occurs on industrial or trade premises (see paragraphs 5.27 to 5.32 below). Again, by virtue of subsection 63(14), a district council cannot take summary proceedings (though it may issue an abatement notice), without the Department’s consent where action could be taken under regulations made under Article 4 of the Environment (Northern Ireland) Order 2002, or the Industrial Pollution Control (Northern Ireland) Order 1997.

4.11 “***Any lake, watercourse, privy, urinal, cesspool, drain or ashpit which is so foul or in such a state as to be prejudicial to health or a nuisance***” (subsection 63(1)(k)) – this provision covers areas of water which, in themselves, are so foul or in such a state as to be prejudicial to health or a nuisance. Cattle slurry ponds or industrial waste ponds evidently have such potential.

4.12 “***Any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health***”(subsection 63(1)(l)) – the range of potential recipients of abatement notices under this provision is subject to an important limitation. No liability may be imposed on someone who has not, by act of default, caused the nuisance to arise or allowed it to continue. In general, a landowner or occupier has no duty to clear

obstructions which occur naturally in a natural watercourse. Therefore, where a natural watercourse became silted up by natural causes and caused a nuisance by flooding the landowner is unlikely to be held liable under this provision. By contrast, if a watercourse is created or substantially altered by humankind, then the landowner or occupier is responsible for its design, construction and maintenance and may be “in default” in respect of their inadequacies.

4.13 “Any private dwelling so overcrowded as to be prejudicial to health of those living there or a nuisance” (subsection 63(1)(m)) – Under this provision, private dwellings are statutory nuisances in two situations: -

(i) if they are in such a state or so overcrowded as to be prejudicial to health or a nuisance to those living there.

(ii) if their use causes, on or off site, a nuisance or conditions prejudicial to health because of the absence of proper sanitary facilities or other reasons.

This provision has been retained as statutory nuisance in Northern Ireland as, unlike the position in England and Wales, there is no statutory standard prescribed in housing law for overcrowding.

4.14 “Any other matter declared by any enactment to be a statutory nuisance” (subsection 63(1)(n))– This section primarily incorporates into the statutory nuisances provisions a number of instances where nuisance was conferred through other statutory provisions, such as mines and disused quarries.

5.0 Prejudicial to Health

5.1 The term “prejudicial to health” is defined in subsection 63(10) of the 2011 Act as “injurious, or likely to cause injury, to health”. However, determination of what in fact are conditions prejudicial to health is more a judgement based upon a balance of common sense and the experience of public health professionals. The use of the term “injury to health” is central to this consideration. It has been held in previous case law that it is not sufficient that there is the risk of personal injury or accident (such as from broken glass), but there must be an underlying threat to

health from disease. However, it has also been held that the impact on health may be indirect (such as sleeplessness).

5.2 The determination of likelihood of injury to health does not require evidence from medical experts and indeed the expertise of Environmental Health Officers and Building Surveyors in evaluating likelihood of injury to health has been recognised by the courts. Also the courts have held that the risk of injury to health does not relate to the risk to a particular person but to the potential impact on health.

Nuisance

5.3 Nuisance is not defined in the 2011 Act but can be regarded as interference that ordinary people would consider unreasonable with the personal comfort or enjoyment or amenity of neighbours or the community. There are three significant differences between common law nuisance and statutory nuisance: -

(i) for a statutory nuisance to occur there must be a common law nuisance. However, not all common law nuisances would amount to a statutory nuisance.

(ii) the statutory nuisance regime, unlike common law nuisance does not deal with harm to property. A statutory nuisance must interfere with personal comfort in a manner that affects a person's wellbeing. For example, dust affecting cars would not be nuisance but the same dust in a person's eyes or hair would interfere with personal comfort even if there were no adverse health impact.

(iii) there is no requirement for a person to have any property rights as for a common law private nuisance - a statutory nuisance protects people not property.

What Constitutes a Nuisance?

5.4 There is no clear objective definition as to what constitutes a nuisance. It has been said that there is a scale between mildly irritating and intolerable and in each case the determination of whether a nuisance exists is a matter of judgement. In addition, the determination is based upon the test of what ordinary, decent people would find unacceptable and unreasonable. In cases that

have been considered, the courts have not taken regard of the particular sensitivities of an individual.

5.5 Therefore, a person with a particularly sensitive olfactory or auditory response is not given any higher standard of protection than a person with a “normal” response. However, although there are powers under section 70 of the 2011 Act for an individual to take action, the primary enforcement method relies on a district council taking action.

5.6 A district council must be of the opinion that either substantial personal discomfort or a health effect must exist. There are eight key issues to consider when evaluating whether a nuisance exists: -

(i) **IMPACT** - this is a measure of the impact of the alleged nuisance on the receptor. In some cases assessment of the impact can be supported by objective measurements (such as noise), but in many cases it will be the objective view of a district council as to the degree of health risk or interference. In addition to the impact on individuals, a council should consider the extent of the impact (how many persons, how far from the source etc.)

(ii) **LOCALITY** - the potential for amenity interference is largely related to the character of the neighbourhood. Many odour and noise nuisances are due to the proximity of the receptor to a source that is generally out of character with the area (for example a factory or a waste water treatment works adjacent to a housing estate). The number of persons affected and the degree of intrusion will depend upon the proximity of the source and receptor and the sensitivity of the receptors.

(iii) **TIME** - many nuisances have a significant impact because of the time at which the nuisance occurs and the degree of impact changes depending upon the time of occurrence. For example, noise from an entertainment facility would be less acceptable after 23.00 hours. Also, odours are often subjectively more annoying during periods when members of the public are outdoors (for example daytime periods during summer months).

(iv) **FREQUENCY** - nuisances that occur frequently or continuously are more likely to be determined to be a nuisance (depending to some degree on the impact). For example dust emissions from a quarry once per month would be regarded very differently to emissions four days per week for 6 weeks a year. Restriction of the frequency of an activity may be method of abatement (e.g. a farm limited to spreading manure for 15 days per year). However, in some circumstances odours that are released periodically can be more intrusive and in many cases the odour frequency is often assessed in conjunction with the odour's persistence in the environment.

(v) **DURATION** - in general short-term events would be regarded differently to longer period or continuous impact. For example, a person practicing a musical instrument for one hour would be assessed differently to a four-hour practice session. However, the duration would have to be considered alongside the time and frequency - practice for one-hour at 23.00 hours or every day may constitute a nuisance. Similarly a fixed period temporary noise source (such as construction works) may not constitute a nuisance.

(vi) **CONVENTION** - convention is important when determining what a reasonable person would find objectionable. For example, whilst some persons may find the noise of garden equipment on a Sunday morning objectionable, such practice is widespread and accepted and would be unlikely to be held by the courts to be a nuisance. Therefore, the existence of a widespread practice or common usage in an area is an important factor.

(vii) **IMPORTANCE** - the importance of an activity in respect of the community is often a key consideration. For example, major road improvements that will improve the air quality and noise environment for many may cause some disturbance to a few persons - this is a balance that should be considered. However, there is a point when even a socially beneficial activity creates such an effect that it becomes unacceptable and, therefore, a nuisance. This needs to also be considered along with the avoidability of the impact and also the principle of best practicable means.

(viii) **AVOIDABILITY** - even though an activity may have social importance there should be a balance as to whether reasonable steps have been taken to minimise the impact. For example, it would be difficult to control noise from a children's playground during the day but there are many methods available to reduce the impact of dust from the extraction equipment at a woodworking factory.

5.7 The standard cannot be defined precisely and much will depend on the view taken by the court of the seriousness of the harm, the health impact and a balance of the key issues outlined above.

Abatement Notices

5.8 If a district council is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice (subsection 65(1)). This notice can require: -

- prevention or restriction of the occurrence of a nuisance
- abatement of a nuisance
- prevention or restriction of the recurrence of a nuisance
- abatement and prevention or restriction of the recurrence of a nuisance

and may also specify works or other steps to meet this objective. The notice must specify the time by which the requirements are to be complied with and also a statement giving details of the right of appeal to a court of summary jurisdiction and it may include a statement to prevent suspension on appeal (see paragraph 5.21 below).

5.9 There are a number of issues for a district council to consider in formulating a notice. The requirements of an abatement notice should be carefully and clearly drafted to make it clear how these will be fulfilled by the recipient but should not be so precise as to leave the recipient with no discretion as to how to comply. The terms of the abatement notice must be both precise and practicable in its terms. Abatement notices should make clear whether the execution of works or other measures is required and in some respect the most effective method of formulation is to require the person responsible for the nuisance simply to abate it or prohibit its recurrence unless there is some good reason why

further measures should be specified. However, it should be considered that it might be easier to demonstrate non-compliance where the requirements of the notice are more specific.

5.10 The notice need not specify whether the adverse state of affairs which is the subject matter of the notice is either prejudicial to health or a nuisance. It is enough that the conditions that constitute the nuisance are sufficiently specified to the extent that the person who is served with the notice knows what is required to abate the nuisance.

5.11 The abatement notice must be served (subsection 65(2)) on the person responsible for the nuisance (the person to whose act, default or sufferance the nuisance is attributable). The term “act” is straightforward, as this is a deliberate action, default is the failure to perform a reasonable duty and sufferance is where either permission is granted leading to a nuisance or a nuisance is allowed to continue where the occupier or owner had, or should have had knowledge of its existence. However, in the case of a nuisance arising from any defect of a structural character it must be served on the owner of the premises and where either the person responsible cannot be found or the nuisance has not yet occurred it should be served on the owner or occupier of the premises. The term “owner” is defined in subsection 63(10).

Deferral of Duty to Serve Abatement Notice

5.12 Subsections 65(3) to (7) of the 2011 Act enable a district council to defer the issue of an abatement notice in the case of a statutory nuisance under subsection 63(1)(i) (noise emitted from premises). The deferral can be for up to seven days while a district council takes appropriate steps to persuade the person on whom it would otherwise be serving the notice to abate the nuisance or prohibit or restrict its occurrence or recurrence.

5.13 This new provision only applies after a district council has completed its investigation of a complaint and has concluded that it is satisfied that a statutory nuisance exists. It does not affect practices and procedures for investigating complaints at an earlier stage, including cases where there are a number of factors to consider before being satisfied that a statutory nuisance exists or is likely to occur or recur.

5.14 There is no obligation on a district council to pursue this alternative route - it may still proceed by issuing an abatement notice straightaway if it so chooses. Whenever a district council decides to use the power to defer service of an abatement notice it should record the reasons for doing so.

5.15 If a district council does defer and the nuisance is not abated by the end of the seven-day period (or if a council concludes before then that it will not be abated within that period), the council must in most circumstances proceed to serve an abatement notice under subsection 65(3) in any event.

Why are these changes being introduced?

5.16 Currently, district councils are required to issue a noise notice once they are satisfied that a noise nuisance exists or may occur or recur. There is no provision for the exercise of discretion as to whether or not to take this action, even if a district council suspects that “best practicable means” may be in place (see paragraphs 5.27 to 5.32 below).

5.17 In some circumstances an informal approach will engender greater co-operation and a faster resolution of a noise nuisance. Sometimes it can be counterproductive and/or unnecessary to issue a noise notice – for example, the notice may provoke one party to withdraw from negotiations, actually aggravate a situation, or enable the person responsible to avoid having to abate the problem by, for example, holding a one-off noisy party. The option to defer serving an abatement notice for up to seven days in order to pursue specific steps may support resolution without recourse to a formal abatement notice. It may also be more effective to use other means of enforcement, such as the Noise Act 1996 in cases of night noise from dwellings. Issuing a Warning Notice under the Noise Act 1996 can often be a more effective means for dealing with one-off occurrences of night noise.

How will the changes work?

5.18 In cases where a district council wishes to use the seven day deferral power, it will usually be appropriate for it to advise the person responsible for the nuisance in writing that a noise nuisance exists or is likely to occur or recur, and of the decision to defer service of an abatement notice provided the nuisance is

dealt with within seven days. A district council may also inform the noisemaker that if the nuisance continues after seven days of the notification of deferral, an abatement notice will be served. Outlining the consequences of an abatement notice in this initial letter advising of the decision to defer is recommended.

5.19 If during the course of the seven days the nuisance is abated or adequately restricted, a district council should write to the person responsible and advise that the nuisance has been satisfactorily dealt with and that no further action will be taken in regard to the specific nuisance referred to in the first letter, provided no recurrence occurs.

5.20 If a district council is satisfied that a statutory nuisance continues to exist, or is likely to occur or recur, after the seven day deferral period, an abatement notice must be served requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence.

Appeals

5.21 Subsection 65(8) provides that a person served with an abatement notice may appeal against the notice to a court of summary jurisdiction within the period of twenty-one days beginning with the date on which he was served with the notice. On hearing the appeal, the court may quash or vary the notice or dismiss the appeal. The grounds for appealing the notice need to be specified and are set down in the Statutory Nuisances (Appeals) Regulations (Northern Ireland) 2012 (Appendix A). A district council should consider the possibility of an appeal against any abatement notice it serves in respect of both content and timescales of the notice and the grounds for making an appeal should always be kept in mind. A district council will also have to consider whether the abatement notice should be suspended whilst an appeal is pending. More than one person can be responsible for the nuisance, so more than one person can be served with the notice. In such a case, unless separate notices are served on each person responsible, then an appeal by one will have the effect of suspending the notice against all, until the appeal is resolved.

5.22 The grounds for appeal can be summarised as follows: -

- (i) that the abatement notice is not justified;
- (ii) that there has been some informality, defect or error with the abatement notice;
- (iii) that the council has refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are unnecessary or otherwise unreasonable in character or extent;
- (iv) that the time specified for compliance is not reasonably sufficient;
- (v) where the nuisance to which the notice relates falls within the definitions of subsection 63(1) that the best practicable means were used to prevent or to counteract the effects of the nuisance;
- (vi) for noise emitted from premises that the requirements of the abatement notice are more onerous than the requirements of any notice, consent or determination under Articles 40 to 46 of the Pollution Control and Local Government (Northern Ireland) Order 1978; or
- (vii) that the abatement notice should have been served on some other person either instead of or in addition to the appellant.

5.23 Where a notice is subject to appeal and either compliance would involve expenditure before the hearing of the appeal or it relates to noise caused by the performance of a duty imposed by law, the notice is suspended until the appeal has been determined. However, the notice is not suspended if the nuisance is injurious to health or of a limited duration and suspension of the notice would render it of no practical effect or the expenditure incurred would not be disproportionate to the public benefit from compliance and the notice includes a statement to that effect.

Enforcement

5.24 There are three methods of enforcement of an abatement notice. A district council can prosecute as a criminal offence, seek an Interdict from the High Court or carry out the works required in

default and recover the costs. The decision to prosecute is discretionary.

5.25 If a person without reasonable excuse contravenes or fails to comply with a notice they are guilty of an offence and are 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. If the offence relates to industrial, trade or business premises the fine shall not exceed £20,000.

5.26 There are effectively two main defences available in proceedings for non-compliance with an abatement notice. The first is the existence of a reasonable excuse and the second that the best practicable means has been used. The concept of best practicable means is outlined in paragraphs 5.27 to 5.32 below. The concept of reasonable excuse is not defined in the legislation. It may be that reasonable excuse could be proved where contravention occurred in an emergency or in circumstances beyond the control of the defender, but would not be available where there was deliberate and intentional breach or even an argument that loud music formed part of a person's culture. It has been held that inability to meet the costs for works did not constitute a reasonable excuse, although a lay magistrate may take account of financial difficulties in mitigation. Also, breach of a defender's rights under the Human Rights Act 1998 could be raised as reasonable excuse. Where a defender relies on a statutory defence, the burden of proof rests with the defender.

“Best Practicable Means” Defence

5.27 The defence that best practicable means (bpm) were used to prevent or counteract the effects of a nuisance is available for prosecutions involving a breach of an abatement notice for certain types of nuisance set out in subsections 65(12) to (13).

5.28 The term is defined in subsection 63(13) and can be summarised as:-

- (a) reasonably practicable having regard to local conditions and circumstances, the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances.

5.29 The means to be used are the best available not only those currently accepted in the business concerned. The costs of compliance are an important but not over-ruling principle. The lack of finance available to the person served with the notice is not only factor in cost assessment nor is the increased cost and impact on profitability. The location of a nuisance is also of importance as it has been held that the test should be applied to the existing location of an activity and cannot require the relocation to another site as this was too onerous.

5.30 The key issue when determining bpm usually relates to the interpretation of “practicable”. It should be noted that definition of “practicable” is not exhaustive as the legislation details issues that “among other things” should be taken into account. The definition includes cost consideration but clearly cost is not necessarily the decisive factor. It is a matter for the Courts to determine whether in a particular instance the controls adopted are reasonable or the costs are excessive taking account of local conditions and characteristics of the nuisance. Finally, it is important to note that it is for the person relying on the defence to establish that bpm has been used.

5.31 There is a complex relationship between the duty of a district council to serve a notice where a nuisance exists and the defence (and ground of appeal) that bpm is being used. Even where a district council considers that a nuisance exists but bpm has been used, there is still the duty to serve an abatement notice. Should a district council serve a notice where they feel bpm is being used they may be exposed to extensive costs should a case go to appeal for non-compliance. In such cases, it is likely that a council would not seek to use the discretionary power to prosecute for non-compliance if bpm was being used. Whilst the opinion of a district council as to whether there is a nuisance is likely to be

flexible to some extent, this may have implications for the human rights of persons affected by the nuisance.

5.32 Where an abatement notice has not been complied with, a district council may abate the nuisance and do whatever may be necessary in execution of the abatement notice including to seize and remove any equipment which it appears to the council is being or has been used in the emission of noise. Any expenses reasonably incurred by a district council in carrying out works in default may be recovered by them from the person by whose act or default the nuisance was caused and the lay magistrate may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the lay magistrate considers fair and reasonable.

Abatement notice in respect of noise in the street

5.33 Section 66 stipulates the procedure to be followed by district councils in serving an abatement notice with regard to noise in the street (section 63(1)(j)). This section further provides for offences for removing or interfering with a notice fixed to a vehicle, machinery or equipment.

Supplementary provisions

5.34 Section 67(1) to (3) provides that where more than one person is responsible for a statutory nuisance, section 65 shall apply to each of those persons whether or not what any one of them is responsible for would, by itself, amount to a nuisance. In particular, this section provides that where an abatement notice has not been complied with, a district council may abate the nuisance and do whatever may be necessary in execution of the notice.

5.35 Section 67(4) provides that where a statutory nuisance exists or has occurred within the district of a district council and is caused by some act or default outside the district, a district council may serve notice as if the act or default were within its district. In this case any appeal shall be heard by a lay magistrate having jurisdiction where the act or default is alleged to have taken place.

5.36 Section 67(7) provides that if a council is of the opinion that proceedings for an offence in a court of summary jurisdiction would afford inadequate remedy in the case of any statutory nuisance, it

may take proceedings in the High Court for specified purposes notwithstanding the council has suffered no damage from the nuisance.

5.37 Where a district council is of the opinion that criminal proceedings under subsection 67(7) would afford an inadequate remedy, it may apply to a court of competent jurisdiction for an Interdict against the person responsible for the statutory nuisance. The inconvenience of the abatement notice procedure would not in itself be sufficient grounds for making an application. A district council must satisfy itself that without the availability of an Interdict, the statutory nuisance would continue, be repeated, or would occur in the first place. The likely consequences of the nuisance, were it to occur, should also be serious. Examples of grounds appropriate for an Interdict include: -

- (i) urgency, e.g. holding a “rave” party in the very near future;
- (ii) where there has been a deliberate and flagrant flouting of the law, e.g. where previous proceedings have been tried but without effect;
- (iii) evidence that the nuisance offender intends to carry on with the conduct complained of, come what may.

5.38 English case law has suggested that in order to proceed with such action a district council must have first served an abatement notice or that there must have already occurred a “deliberate and flagrant breach of the law”. If an abatement notice had already been served but summary action in respect of its breach not proceeded with, a district council could still seek an Interdict. A district council is not usually required to give undertakings in damages before an Interdict is granted. If an Interdict is granted any breach is regarded as contempt of court and penalties include a prison sentence of up to two years and/ or an unlimited fine.

Expenses recoverable from owner to be a charge on premises

5.39 Section 68 enables district councils, in certain circumstances, to charge premises with expenses reasonably incurred in abating a statutory nuisance. It also provides that the expenses and interest are a charge on the property until they are paid off and makes provision for appeal to the county court against the notice making the expenses a charge.

Payment of expenses by instalments

5.40 Section 69 provides for the payment of expense by instalments where any expenses are a charge on premises under section 68. The section also permits the sum charged to be taken by the council from the rent of any tenant.

Summary Proceeding by Persons Aggrieved by Statutory Nuisances

5.41 Section 70 permits any person, on the grounds that that person is aggrieved by the existence of a statutory nuisance, to seek an order from a court of summary jurisdiction after giving the person against whom the order is sought 21 days notice. This order can require the defender to abate the nuisance or to prohibit a recurrence of the nuisance. In cases of premises in such a state as to be unfit for human habitation, the court may prohibit the use of the premises until rendered fit. Contravention of an order of the court is an offence and 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. There are effectively two main defences available in proceedings for non-compliance and these are the existence of a reasonable excuse or that the best practicable means has been used. The court may also direct the council to do anything which the person convicted was required to do by the order and may also order the defender to pay to the aggrieved person compensation.

Application of this Part to the Crown

5.42 Section 71 provides for Part 7 of this Act to bind the Crown.

Department of the Environment

ANNEX 1

STATUTORY NUISANCE FROM INSECTS

1. The vast majority of insect species do not cause a nuisance, but are essential components of biodiversity and maintain ecosystems through pollination, soil maintenance and other functions. There are also a number of insect species which can cause nuisance in sufficient quantities, or seasonally. Some may also pose a public health risk, although they may not be regarded as a public health pest in terms of environmental legislation, or a risk in animal husbandry. Such insects include mosquitoes (*Culicidae*), house flies (*Musca domestica* Linnaeus), lesser house flies (*Fannia canicularis* (Linnaeus)), etc.
2. There is a difference between insects arising from an activity on a business, trade or industrial premises, and natural occurrence of insect populations. It is not the intention for this measure to cause environmental damage to the ecosystem or biodiversity.
3. It should not be assumed that killing insects is necessarily the most appropriate way to cease or abate a nuisance. One of the intentions behind the measure to introduce insect statutory nuisance is to capture statutory insect nuisance caused as a result of activity on premises, where control through the existing limb of “any premises in such a state as to be prejudicial to health or a nuisance” would not be appropriate. Another intention is to control statutory insect nuisance at source, where such control will not cause unacceptable damage to the environment or biodiversity. If activity and conditions attract or provide breeding conditions for insects to such an extent that they constitute a statutory nuisance, then it is the activity and conditions which the Environmental Health Officer should address.
4. Environmental consequences – indirect as well as cumulative – of remedial action must be considered, such as the effects of insecticides, if used, on the environment, nature, bodies of water, etc. Insecticides should, therefore, be chosen with care.
5. District councils have a duty to take reasonable steps, where practicable, to investigate any complaints of insect nuisance; it is

expected that the following sources will generate most complaints:

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- Poultry houses/farms (buildings on agricultural land are not exempt from statutory nuisance from insects, even though the land surrounding them may be) (the attached draft Statutory Nuisances (Insects) Regulations (Northern Ireland) 2012 at Appendix B set out further categories of land excluded from the provisions of section 63(11) in respect of insect nuisance);
- Sewage treatment works (see also the Department's Code of Practice on Odour from Sewage Treatment Works);
- Manure/silage storage areas;
- Animal housing;
- Stagnant ditches and drains (i.e. containing putrid and anoxic water) (provided they are on relevant industrial premises);
- Landfill sites/refuse tips;
- Waste transfer stations;
- The commercial parts of mixed commercial/residential blocks of buildings (i.e. excluding the residential premises contained therein);
- Trade or business premises (e.g. contaminated goods, kitchen areas);
- Slaughterhouses; and
- Used car tyre recycling businesses.

Example of insect nuisance – species of house fly (*Musca domestica* Linnaeus). Lesser house fly (*Fannia canicularis* (Linnaeus)), blow flies (*Calliphora* spp and *Lucilia* spp).

6. Houseflies can be classed as public health pests or pests of animal husbandry. They are associated with conditions that exist in rotting, fermenting, or at least moist organic matter, preferably of a high protein content, such as those that could be present at a sewage works (though they are also a natural part of the biological process and may indicate good quality effluent and process if found on a filter works at a sewage treatment works). Houseflies are frequently found in association with man, either indoors or

taking advantage of other human activities, as do many other species of insect.

7. Houseflies and other pests which occur in significant numbers to cause a pest problem are almost certainly being attracted to the site because of a breakdown in standards of hygiene. Occasionally, the problem may be localised, i.e. blow flies (*Calliphora* spp and *Lucilia* spp) may be attracted by a dead bird or rodent, or due to external causes, such as a nearby farm or cattle in an adjacent field. Therefore, the most important aspect of fly control is to trace the cause of the problem and correct it. Only then can preventative measures be undertaken.

8. Houseflies are significant vectors of disease. They can transmit intestinal worms, dysentery, gastro-enteritis, typhoid, cholera and tuberculosis. The larvae are capable of developing intestinally if ingested. They can contaminate foodstuffs, though this would usually occur only where there are poor hygiene standards. As they feed indiscriminately on faecal matter and human food, their status as a vector is well noted.

9. There are no objective levels at which a statutory nuisance exists or may be caused. In general, in domestic premises, it is likely that the threshold will be very low and control actions might be taken in cases of few house flies. As a guideline, an occupier will normally experience some irritation if there are five or more "flying" house flies present in any one room at any one time on three successive days. If house flies are monitored with baited traps, sticky ribbons, or spot cards a collection of more than 25 in any 48 hour period may indicate grounds for distress.

10. The complaint threshold density of houseflies at waste management sites may be 150 individuals per flypaper per 30 minutes. However, as stated earlier, there are no objective levels for statutory nuisance. It does not, therefore, necessarily follow that fewer than five house flies in a room in a house, or 150 house flies per flypaper per 30 minutes at waste management sites, do not constitute a statutory nuisance, or that five or 150 necessarily do. Just as noise nuisance is not a matter of decibel levels, insect nuisance is not a matter of numbers of insects. Impact may also depend on, e.g., size of room, number of people/premises affected etc. House flies do not damage property.

11. Both house flies (*Musca domestica*) and lesser house flies (*Fannia canicularis*) occur throughout the UK. Both houseflies and lesser houseflies are common in homes, barns, stables, and poultry houses in spring, summer and autumn.

12. Lesser house fly larvae typically consume decaying organic matter and excrement, but have been known to develop in the intestinal tract of man and animals. In some areas, lesser house fly larvae are the predominant maggots found in chicken manure.

13. Adults may live as long as two months. Populations flourish during cool seasons, particularly spring, early summer, and late autumn. Peak numbers usually occur by July, after which dry, hot weather and parasitism causes populations to subside until autumn.

Prevention

14. Physical prevention is preferred to pesticide usage. It may be preferable to control/reduce harbourage and breeding material than to treat an infestation once it is established. Currently in the UK natural predation of house flies in poultry houses is based on indigenous species, such as the *Carcinops* beetle (though it may not be sufficient alone). Larvicides are also generally used, although adulticides should be the last line of defence. Elsewhere in Europe and America, poultry farmers are using specially bred parasitic wasps and predator flies as a control method.

15. Premises need to adopt an integrated approach to house fly control which includes building design, effective management and systematic monitoring of house fly populations. For example, integrated fly control

programmes for poultry houses tend to be based on: -

- (i) selective application of insecticides against the adult;
- (ii) early introduction of insecticide control measures in early spring before house flies appear; repeated as needed throughout the warm months, and
- (iii) leaving manure undisturbed throughout the warm months when house fly breeding may occur, removing it just once in early spring before house flies appear.

Engaging the farmer in discussion about management practices that could be adopted may support satisfactory outcomes. There

may, for example, be times when manure may be removed in the autumn for land spreading, or twice a year.

16. Ordinarily, house fly control from 1 to 2 km around sensitive sites will prevent ingress into a sensitive area (containing dwellings, for example). In cases where no local breeding area can be identified, adult house flies may be flying long distances (i.e. several miles) from infestation sources of, for example, refuse tips or animal houses. Good sanitation, and elimination of breeding areas, are necessary for good management. Chemical treatment is the last line of defence.

17. Spot cards can be used as a diagnostic tool. These are 3 inch by 5 inch white index cards which are attached to a house-fly resting surface. A minimum of five cards should be placed in a suspect animal facility and left in place for seven days. As a guide, a count of 100 or more faecal or vomit spots per card per week may be taken to indicate a high level of house fly activity and a need for control (although this is not to say that a count of, say, 99 would not indicate a high level of house fly activity and a need for control).

Physical prevention methods

- Food and materials on which the house flies can lay their eggs should be removed, destroyed as a breeding medium, or isolated from the egg-laying adult house fly.
- Wet manure should be removed at least twice weekly if necessary to break the breeding cycle.
- Wet straw should not pile up in or near buildings and, as one of the best fly breeding materials, is not recommended as bedding.
- Spilled feed should not be allowed to accumulate, and should be cleaned up at least twice a week.
- Windows and doors can be proofed with fly screens of approximately 1.5 mm mesh.
- Fly traps may be useful in some house fly control programmes if enough traps are used, placed correctly, and used both indoors and outdoors. House flies are attracted to white surfaces and baits that give off odours. Lesser house flies are shyer of traps.

- Dustbins, wheelie-bins, paladins and skips should have tight-fitting lids and be cleaned regularly. Dry and wet rubbish should be placed in plastic rubbish bags and sealed up. All waste receptacles should be located as far from building entrances as possible.
- For control at waste disposal sites, refuse should be deposited onto the same area as inorganic wastes to reduce the capacity of breeding resources, or covered with soil or other inorganic wastes of around 15 cm consistent thickness.

19. Electronic fly killers which can attract insects to an electrified grid by using an ultra-violet light source are not generally effective against houseflies. House flies are not particularly attracted to them and, although they may kill the occasional one, they cannot cope with large numbers. If they are used, one trap should be placed for every 30 feet of wall inside buildings, but not placed over or within five feet of food preparation areas. Recommended placement areas outdoors include near building entrances, in alleyways, beneath trees, and around animal sleeping areas and manure piles.

Eradication – chemical

20. Chemical treatment should be considered as a last resort, as it may only be treating the insects in the vicinity at the time of treatment and not the source, although most pesticides do have a residual effect and may work on particular species throughout their lifecycle. Given the considerable link to water at sewage treatment works for example, management of insects may be more beneficial than treatment, by reducing the need for pesticide usage.

21. The use of pesticides near water bodies is one of the most risky and heavily controlled areas of pesticide use, and the potential for pesticide use on linear water bodies that drain into rivers and streams must be minimised. Removal of breeding material and habitats can keep insects under control or at bay.

- For adult control, conventional knockdown or residual treatments will kill the majority of adult flies in spite of the development of high resistance levels in a number of housefly populations.

- Residual insecticides applied to the house flies' favoured resting areas will control landing flies in some situations, although they should not generally be applied to breeding areas, as insecticide breakdown can be rapid and resistance may be encouraged.
- In poultry houses, the use of mists, fogs or baits may be necessary for house fly control. Treatment in poultry stations should be carried out by a qualified pest controller. Insecticides to control maggots should not be applied to manure, which should be kept dry and removed only during the winter.
- When flies are a major pest in commercial egg production facilities, they can be controlled by applying adulticides, or larvicides, to suppress adult densities directly or indirectly. Residual wall sprays can be applied where the flies congregate. Resistance can develop more rapidly in house fly populations on farms on a continuous insecticide regime using a single chemical than on farms in which insecticides are alternated. Residual insecticides may be applied to favoured resting areas for house flies. Breeding areas should be avoided as spray targets as, where the insecticide breaks down in an area where eggs are developing, it may encourage increased resistance in the house fly population.
- Outdoors, house fly control can include the use of chemical treatments in the bottom of skips, and treatment of vertical walls adjacent to skips and other breeding sites, with microencapsulated or wettable powder formulation, and the use of fly baits near adult feeding sources. In areas like rubbish tips treatment should always be carried out by a pest control specialist.
- Indoors, house fly control can include automatic misters, fly paper, electrocuting and baited traps that can be used in milking parlours and other areas of low fly numbers.

Example of insect nuisance – fruit flies (*Drosophila* spp)

22. Fruit flies comprise several species of the genus *Drosophila* (family Drosophilidae). They are increasingly associated with commercial composting activities and vegetable producers, wholesalers, and packers who store waste and/or reject produce in

the open, as they are attracted to ripened or fermenting fruit and vegetables. Dwellings that report high infestations are increasingly found near these commercial undertakings. Fruit flies can be a year-round problem in domestic kitchens. They can contaminate foodstuffs, but usually only where there are poor hygiene standards or exposed ripe fruit. They do not carry disease or cause structural damage to buildings. The sheer numbers that congregate can create a nuisance. As a guideline, an occupier will normally experience some distress if there are 50 or more 'flying' fruit flies present in any one room at any one time on three successive days.

23. Detecting domestic breeding areas for fruit flies involves finding the source(s) of attraction and breeding, which can require much thought and persistence. Potential breeding sites which are inaccessible (e.g., waste-disposals and drains) can be inspected by taping a clear plastic food storage bag over the opening overnight. If flies are breeding in these areas, the adults will emerge and be caught in the bag.

Prevention

24. The best way to prevent problems with fruit flies is to eliminate sources of attraction. Produce which has ripened should be covered rather than discarded in the open. A single rotting potato or onion can breed thousands of fruit flies, as can a waste or recycling bin which is not emptied or cleaned.

25. Where regular spillages of fruit juice or pulp inside buildings attract fruit flies, windows and doors should be equipped with tight-fitting (16 mesh) screens to help prevent adult fruit flies from entering from outdoors. All spillages and accumulations of fruit and vegetable juice and pulp should still be cleaned up regularly and thoroughly.

Eradication

26. Once a structure is infested with fruit flies, all potential breeding areas must be located and eliminated. Unless the breeding sites are removed or cleaned, the problem will continue no matter how often insecticides are applied to control the adults. Once the source is eliminated the flies will try to find new potential breeding substrates, usually out of doors. Only if the source has

been eliminated and flies given time to disperse should an aerosol insecticide be used to kill remaining flies.

Example of insect nuisance – cockroaches (*Periplaneta Americana* Linnaeus), *Blattella germanica* (Linnaeus), *Blatta orientalis* (Linnaeus))

27. Cockroaches pose a public health risk. Cockroaches can also cause allergic reactions in susceptible individuals, e.g., asthmatics, house dust mite allergen sufferers, and individuals exposed to infestations for long periods of time. Perhaps the most important effect that cockroaches have on humans is allergies. Their presence may cause an occupier distress. They can contaminate a range of stored food products.

28. There are three main pest species: the American (*Periplaneta americana*), German (*Blattella germanica*) and Oriental (*Blatta orientalis*) Cockroaches. The German and Oriental species are common in the UK. Cockroaches are highly adaptable and extremely mobile, moving into new buildings via sewer pipes, ducts etc. The Oriental cockroach is the most common and largest of the two. It can climb rough surfaces such as brickwork and will congregate around water sources. The German cockroach is smaller, but is able to climb vertical smooth surfaces. Neither cause structural damage.

29. One way to confirm an infestation is by using a stick trap. These can be purchased from a pest control contractor.

Prevention

30. Good standards of hygiene alone cannot prevent a cockroach invasion or combat an existing infestation, but are a necessary component of any control strategy. Since most buildings cannot be instantly cooled or heated to the temperatures required to kill cockroaches (7C or 46C), and vacuuming them up may not appeal, the use of insecticidal bait gels, fumigants and sprays are at present the most common method employed to control cockroaches.

31. Prevention involves proofing. Cockroaches are nocturnal and they prefer warm dark spaces. Any cracks in walls, floors and

ceilings or inaccessible void between and behind equipment should be eliminated.

Eradication

32. It is a legal requirement that any signs of cockroaches in a food business are controlled. Various insecticides can be used to control cockroaches. These are dangerous chemicals and must be applied only by a competent professional pest control operator.

33. The use of insecticidal bait gels and fumigating sprays is the most common method employed to control cockroaches. Increased public concerns regarding the safety of synthetic pesticides and their effect upon human health and the environment, together with the increasing problem of cockroach resistance to insecticides, have resulted in a demand for effective, environmentally positive methods of control.

Example of insect nuisance – moth flies or sewage filter flies (*Psychoda* spp and *Tinearia alternata* (Say))

34. Sewage filter flies (principally *Psychoda albipennis* Zetterstedt, but also some other species of *Psychoda* and *Tinearia alternata* (Say)) belong to the family Psychodidae, commonly known as moth flies. They like moist, organic or septic systems for egg laying, and are common in the vicinity of sewage works.

35. The larvae are often considered beneficial as an essential part of the cycle that breaks down waste into water-soluble compounds. Because they tend to live in protected places, clouds of flies might be the first sign of infestation.

36. They do not bite or sting, but can be a nuisance, flying in the eyes, mouth and nostrils of people. Because of their points of origin, they can carry disease, although actual transmission is extremely unlikely. In addition, they do not pose a contamination risk to food.

37. There are no objective levels at which sewage filter flies do or may cause a statutory nuisance. As a general guideline, they might cause an occupier distress if 50 or more 'flying' sewage filter flies are present in a room on three successive days, though obviously this indication will vary and depend on such factors as

room size etc. Sewage filter flies have a relatively slow breeding cycle with about eight generations a year. Most infestations take place during the summer months as the adults emerge.

38. Control of sewage filter flies requires locating and eliminating larval breeding sites, which may be difficult and require perseverance. One way to check potential individual breeding sites is to cover the entrance with plastic film taped to the floor or fixture. If sewage filter flies are breeding there, they will accumulate beneath the film within a day or two.

39. One way of eliminating sewage filter flies is to clean the breeding place to remove organic matter. For example, a slow-moving drain can be cleaned with a stiff brush or other tool. Drains that cannot be scrubbed can be rinsed with water under high pressure, sterilised with boiling water, or treated with a bacterial agent to biodegrade the organic matter.

40. Household insecticides can be used to control adult sewage filter flies, but the effects will be very temporary unless the source of the larvae is also removed.

41. It is recommended that operators of sewage treatment works should have systems in place for treating beds with a larvicide where there is a risk of, or a measurable, nuisance, and checking for high concentrations of sewage filter flies. The timing and dosing of the filter beds is critical to effectiveness, and must be carefully managed to prevent the release of chemicals into waterways or an effect on the balance of organisms in the ecosystem. In some cases it may be best to limit treatment to knock down or surface treatments.

42. Insects emanating from filter beds are a source of food for various wild bird and bat species, which in turn act as a natural means of pest control. Treatment at filter beds could be so effective that these species lose a useful source of food supply.

Example of insect nuisance – mosquitoes (Culicidae)

43. There are about 30 species of mosquito (family Culicidae) in the UK, occupying aquatic habits such as coastal salt waters, brackish inland waters, stagnant pools and water-filled hollows (including in trees and logs). There are four stages of life, eggs

laid on water which hatch within a few hours; larva and pupa that are free swimming in water and must come to the surface to breath; and the winged adult.

44. The Northern Ireland climate is not currently suited to the transmission of tropical diseases, and the low fevers which can be caused by mosquitoes in Southern and Central Europe have not been detected here. Malaria is the only human infection known to have been transmitted in the UK by two species of mosquitoes of the genus *Anopheles*, but it is extremely unlikely.

45. Mosquitoes can have a nuisance value. Their bites can cause severe skin eruption and localised pain, and severe infestations can cause much distress which is a valid reason for mosquito control. There are no objective levels at which a statutory nuisance may or does exist. As a general guideline, an occupier might feel irritation if five or more 'flying' mosquitoes are present in a room for three successive days. They do not damage property or pose a contamination risk to foodstuffs.

Prevention

46. Mosquito control should be aimed at both the larval and adult stages of life cycle, although as mosquitoes do not normally rest in buildings, control of adults can be impractical.

47. Larval control can be achieved through eliminating or changing the characteristics of larval sites, which might need to be achieved piecemeal and over a period of years.

48. Man-made containers of water such as old car tyres, empty pots, open sewers and drains containing putrid and anoxic water should, as far as is practicable, be drained and kept empty. Water can be channelled to increase flow. Cesspools, septic tanks and drains should be sealed. Rainwater butts and tanks should have close-fitting lids. Rivers, watercourses (other than those mentioned above), lakes and ponds are excluded from the nuisance definition and should not be drained.

49. Insecticides, repellents, vapourising mats, mosquito coils and fly screens may offer some personal protection from adult mosquitoes.

Eradication

50. Light oil or lecithin can be applied to water to reduce the surface tension and prevent larvae from obtaining oxygen. Such agents spread readily over large areas. The technique should not be used where rivers, watercourses (other than open sewers and drains containing putrid and anoxic water), lakes or ponds may be affected. The Northern Ireland Environment Agency should be consulted before use, if there is a Special Site of Scientific Interest in the local vicinity. The technique will also affect non-target species of insect living in the body of water, many of which are the natural predators of the mosquito larvae. The removal of the more long-lived predators of the mosquitoes may result in an increased problem as the mosquitoes would be able to respond quickly to take advantage of the predator-free environment. Agents need to be appropriately approved as biocides.

51. Larvae can be attacked by applying formulations to larval sites which produce a crystal which breaks down into stomach poison.

52. Adult mosquitoes can be eliminated using “knock-down” agents or residual insecticides.

Environmental impact

53. Insects rarely cause a significant health risk, and health risks where they do or may exist, are often associated with human habitation and waste, so significant damage to the environment should not be necessary. Environmental management should be the first option.

54. Any mitigating treatment should take account of factors including impact on health and well being; impact on the target and non-target species; impact on the environment including ground and water source contamination; cost; and efficacy.

ANNEX 2

STATUTORY NUISANCE FROM ARTIFICIAL LIGHT

1. In order to understand what may be termed a statutory nuisance in lighting, an understanding of some lighting terminology is required. Light (or luminous flux) is a type of radiation and forms part of the electromagnetic spectrum visible to the eye. It is measured in lumens (lm) (N.B. not 'watts', which is only a measure of electrical consumption).

2. The amount of light falling on a surface is known as illuminance and is measured in lumens per square metre or lux. While 'illuminance' is easy to calculate and measure and is therefore widely used, the eye does not see illuminance, but rather the light radiated or reflected off a surface which is known as luminance, or brightness. It is measured in candelas per square metre (cd/m²) and if the surface is glossy, can differ with the angle of view.

3. The term candela (cd) or (Kcd = 1000 cd) is by itself a measure of light intensity. Whether this light 'intensity' is seen as glare or not depends on the surrounding 'luminance', as can be noted when comparing a road lighting luminaire or floodlight lit during the day and again at night.

4. District councils have a duty to take reasonable steps, where practicable, to investigate any complaints of artificial light nuisance; it is expected that the following sources will generate most complaints: -

- Domestic security lights.
- Commercial security lights.
- Healthy living and sports facilities (see below).
- Domestic decorative lighting.
- Exterior lighting of buildings and decorative lighting of landscapes.

- Laser shows/sky beams/light art.

5. Christmas lights may also be the subject of complaint, and could be covered by statutory light nuisance, although this seems unlikely given their duration.

6. We anticipate that much artificial light nuisance will be caused by excessive levels of illuminance and glare, which is inappropriate to its need and which has been poorly designed, directed, operated and maintained. Simple remedies, such as re-aiming or screening, should be sufficient in many cases and, although light nuisance is not a matter of light levels per se, light meters are available and affordable for taking measurements in order to quantify the scale of the possible nuisance.

7. Efficient and high-quality lighting installations that help people to see where they are going and bring security to both themselves and their property can be designed so as to produce minimal impact on the environment. The management and maintenance of such lighting that limits both glare and dark shadows is also essential for people with a visual impairment.

8. We also anticipate a number of complaints on streetlights. However, these are not likely to qualify as artificial light statutory nuisance as they are unlikely to be located on “premises”.

9. Artificial light nuisance may be, but is not necessarily, the same as light pollution. Artificial light nuisance is a source of light that in the opinion of a trained public health professional, who makes an assessment on a case by case basis, interferes with someone’s use of their property, and / or is or might be prejudicial to someone’s health. Light pollution could be defined as any form of artificial light which shines outside the area it needs to illuminate, including light that is directed above the horizontal into the night sky creating sky glow (which impedes our views of the stars), or which creates a danger by glare. Although light might affect the aesthetic beauty of the night sky and interfere with astronomy, it is not necessarily also a statutory nuisance. The statutory nuisance regime is not an appropriate tool with which to address light pollution per se.

Domestic security lights

10. Those aggrieved by a neighbour's lighting should be encouraged to speak to their neighbour first where possible, perhaps with the aid of a mediation service.

11. Inappropriate lighting can cause glare and dark shadows which may adversely affect drivers, cyclists and other road users, including pedestrians, and people with a visual impairment. Bad lighting can also produce shadows for those with criminal intent to hide in or behind. Many cases of artificial light nuisance can be solved through simple engineering techniques and consideration of function and effect. For example: -

- The minimum level of illumination necessary to light a property should be used. Relatively high-powered lights are rarely necessary in domestic situations and, besides wasting energy and money, can cause glare, which can adversely affect road users or other passers-by. Excessive levels of illumination provide dark shadows for people, including those with criminal intent, to hide in or behind. Lighting that is shielded or angled down can actually improve rather than compromise security.
- Special optics or “double asymmetric” luminaires – which are designed to ensure full flow of light over the lit area from each floodlight – can be aimed facing downwards while still spreading light over a wide distance (the lamp is usually fitted close to the back edge of the unit, not in the middle). The reflector becomes less visible to onlookers resulting in low glare to the surrounding locality.
- A separate switching detector can be used on some models to sense the movement of intruders on the property. Luminaires and detectors should be aimed to detect and light people on the property, not people or animals walking down the street. If lights detect everything that moves, they will switch on and off repeatedly and could be a source of statutory nuisance.
- Timers adjusted to the minimum can reduce the operation of the light.
- Bulkhead or porch lights are cheaper than security lights, use less energy, and have reduced glare so

there are fewer shadows for those with criminal intent to hide in. Movement detectors on these lights are generally mounted lower and so are less susceptible to nuisance switching on and off. However, they tend, because they are lower, to be aimed more horizontally, capture movement over a wider range, and if not located with care can be interfered with.

- Vegetation may help screen the light at certain times of year provided the movement of vegetation itself does not trigger light, and it does not cause a “high hedges” problem.

12. It is sometimes suggested that a complaint of artificial light nuisance could easily be mitigated by the use of curtains or blinds, even blackout curtains or blinds, by the complainant. It is for the Environmental Health Officer to exercise discretion over what is reasonable and what is not. It might be reasonable to expect a complainant to use curtains or blinds of everyday standard if they are bothered by unwanted light in their home. It might not be reasonable to require a complainant to purchase and install blackout hangings which might be expensive, and/or impair that person’s enjoyment of his property. It is not reasonable to leave the solution and cost of abatement to the complainant rather than the perpetrator.

13. Technical parameters on obtrusive lighting, formulated by the International Commission on Illumination and Institution of Lighting Engineers from research into individual sensitivity to light, may be helpful in considering the level of sensitivity that might be considered that of the “average person” without unusual sensitivities. These parameters vary depending on whether the installation is in town or country (there are four suggested environmental zones), and there is a suggested curfew time of 23.00 after which lighting levels should be further restricted. However, there are no objective levels at which artificial light does or does not constitute a statutory nuisance.

14. It is sensible for abatement notices to be “simple”, requiring abatement and non-recurrence within a specified timescale. If the abatement notice is too detailed, it could be that the terms of the abatement notice may be fulfilled whilst the nuisance remains unabated.

Commercial security lights

15. Lighting used on commercial premises will be subject to the same controls as apply to domestic premises, i.e., it will be for the district council to decide whether the lighting amounts to a statutory nuisance.

16. Commercial premises are more likely than domestic premises to use lighting which makes a material change to the external façade of the building. It may therefore be subject to planning permission.

17. Premises or apparatus used for the provision of electronic communication services need adequate lighting for operation and security purposes, to ensure the safety of their staff, and to protect the integrity of the telecommunications network. Statutory nuisance law recognises the need for industry to be able to carry out its usual functions without being compromised by inadequate security lighting. That need is protected by the defence of “best practicable means”.

Exterior lighting of buildings and landscapes

18. Exterior lighting to enhance the appearance of buildings, monuments, trees and other civic features increasingly impacts on the street scene. Such installations can enhance and add interest to the surrounding environment provided they are properly designed. However, such lighting systems should not be used also to provide e.g. street lighting and should generally be switched off overnight, following an agreed curfew time.

Laser shows, sky beams, light art

19. In order to constitute an existing or potential statutory nuisance, laser shows, sky beams and light art would have to materially affect someone’s use of his home and/or actually or potentially his health, assuming normal sensibilities. District councils should do their best to ensure that lighting under their control does not cause problems to the local community. District councils should also take into account whether laser shows/beams etc., are a sustainable or wasteful use of energy. The Department expects district councils to take reasonable steps to investigate

and, where appropriate, resolve problems as a matter of good practice and consideration for the local environment and the community to which they are accountable.

Streetlights

20. Streetlights are not specifically exempt, but because of their location are unlikely to qualify, as generally speaking they are not found on “premises”. It is, however, acknowledged that streetlights can have adverse affects on the local community.

Sports Facilities

21. Given the limited hours of daylight in the winter, floodlighting is essential if communities are to make maximum use of many sports grounds. All new floodlighting schemes are subject to appraisal under the planning system, which aims to balance the interests of those who may object to new sources of bright light against the interest of those who will benefit from the lighting in terms of greater opportunity to participate in sport. Full details of the equipment to be used and estimated lighting levels, not only on the field of play, but also that trespassing onto surrounding properties, should all be submitted to the Department to assist with planning permissions. Where planning permission is granted, it is usually accompanied by strict technical specifications designed to ensure that nuisance from the lighting is minimised.

22. Against this background, the Department would not normally expect district councils to have to resort to a statutory nuisance abatement order to address complaints about light from illuminated outdoor sports facilities.

23. Any modern facility which is operating in accordance with approved standards will be able to rely on the statutory defence of “best practicable means” (bpm). Most such facilities are likely to be regarded as businesses, and so benefit from this defence in any event under section 63(13)(a) of the 2011 Act, but to ensure that all are covered by this defence, section 65(13)(b)(ii) of the 2011 Act extends the bpm defence to all outdoor relevant sports facilities.

24. There may be occasions when badly sited or defective floodlighting causes unnecessary hardship to individuals. In such

cases a district council may consider making use of statutory nuisance legislation. However, before concluding that it is satisfied that a statutory nuisance exists a district council should make every effort to resolve the problem through discussion with those responsible for the lighting. For example, older floodlighting towers can be affected by wind which can change slightly the direction of the floodlights; such situations can be resolved by altering the fixings and repositioning the lights in their original position. Zero upward light can be achieved by using double asymmetric full horizontal cut-off luminaires. Additional shielding, suitably painted black, can provide further mitigation if required. An abatement notice should only be issued as a measure of last resort.

25. “Relevant sports facility” is defined in the subsections 65(14), (15), and (16) of the 2011 Act. It is a facility used when participating in a relevant sport, and includes the playing area and related structures. However, sports facilities that are located in domestic premises, including land attached to such premises, are excluded. “Relevant sports” are listed in an Order (The Statutory Nuisances (Artificial Lighting) (Designation of Relevant Sports) Order (Northern Ireland) 2012 (draft attached at Appendix C)) and includes: American Football, Archery, Association Football, Athletics, Australian Rules Football, Badminton, Basketball, Baseball, Biathlon, Bobsleigh, Bowls, Camogie, Cricket, Croquet, Curling, Cycling, Equestrian Sports, Gaelic Football, Golf, Gymnastics, Handball, Hockey, Horse Racing, Hurling, Ice Hockey, Ice Skating, Lacrosse, Lawn Tennis, Luge, Modern Pentathlon, Motor Cycling, Motor Sports, Netball, Polo, Roller Sports, Rounders, Rowing, Rugby League, Rugby Union, Shooting, Skateboarding, Skiing, Softball, Swimming (including Diving), Tennis, Triathlon, Tug of War and Volleyball.

2012 No. []

ENVIRONMENTAL PROTECTION

**The Statutory Nuisances (Appeals) Regulations (Northern
Ireland) 2012**

Made - - - - - ***** 2012

Coming into operation - - - - - 1st April 2012

The Department of the Environment makes the following Regulations in exercise of the powers conferred by paragraph 1(4) of Schedule 2 to the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011⁽¹⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Statutory Nuisances (Appeals) Regulations (Northern Ireland) 2012 and come into operation on 1st April 2012.

(2) In these Regulations—

“the 1978 Order” means the Pollution Control and Local Government (Northern Ireland) Order 1978⁽²⁾; and

“the 2011 Act” means the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011.

Appeals under section 65(8) of the 2011 Act

2.—(1) The provisions of this regulation apply in relation to an appeal brought by a person under section 65(8) of the 2011 Act (appeals to a court of summary jurisdiction) against an abatement notice served upon that person by a district council.

(2) The grounds on which a person served with such a notice may appeal under section 65(8) of the 2011 Act are any one or more of the following grounds that are appropriate in the circumstances of the particular case—

- (a) that the abatement notice is not justified by section 65 of the 2011 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice served under section 66(3) of the 2011 Act (certain notices in respect of vehicles, machinery or equipment);

⁽¹⁾ 2011 c. 23 (N.I.)

⁽²⁾ S.I. 1978/1049 (N.I.19)

- (c) that the district council has refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
 - (e) where the nuisance to which the notice relates—
 - (i) is a nuisance falling within section 63(1)(d) or (g) of the 2011 Act;
 - (ii) is a nuisance falling within section 63(1)(a), (e), (f), or (i) of the 2011 Act and arises on industrial, trade or business premises;
 - (iii) is a nuisance falling within section 63(1)(b) of the 2011 Act and the smoke is emitted from a chimney;
 - (iv) is a nuisance falling within section 63(1)(j) of the 2011 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes; or
 - (v) is a nuisance falling within section 63(1)(h) of the 2011 Act and—
 - (aa) the artificial light is emitted from industrial, trade or business premises; or
 - (bb) the artificial light (not being light to which sub-paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 65(14) of the 2011 Act,
- that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
- (f) that, in the case of a nuisance falling within section 63(1)(i) or (j) of the 2011 Act (noise), the requirements imposed by the abatement notice by virtue of section 65(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of—
 - (i) any notice served under Article 40 or 46 of the 1978 Order (control of noise on construction sites and from certain premises);
 - (ii) any consent given under Article 41 or 45 of the 1978 Order (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone); or
 - (iii) any determination made under Article 47 of the 1978 Order (noise control of new buildings);
 - (g) that the abatement notice should have been served on some person instead of the appellant, being—
 - (i) the person responsible for the nuisance;
 - (ii) the person responsible for the vehicle, machinery or equipment;
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises; or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
 - (h) that the abatement notice might lawfully have been served on some person instead of the appellant being—
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,
- and that it would have been equitable for it to have been so served;

(i) that the abatement notice might lawfully have been served on some person in addition to the appellant, being—

(i) a person also responsible for the nuisance;

(ii) a person who is also the owner of the premises;

(iii) a person who is also an occupier of the premises; or

(iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in connection with any copy of the notice served under section 66(3) of the 2011 Act, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph 2(h) or (i), the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.

(5) On the hearing of an appeal the court may—

(a) quash the abatement notice to which the appeal relates;

(b) vary the abatement notice in favour of the appellant in such manner as it thinks fit; or

(c) dismiss the appeal,

and an abatement notice that is varied under sub-paragraph (b) shall be final and shall otherwise have effect, as so varied, as if it had been so made by the relevant district council.

(6) Subject to paragraph (7), on the hearing of an appeal the court may make such order as it thinks fit—

(a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work; or

(b) as to the proportions in which any expenses which may become recoverable by the district council under Part 7 of the 2011 Act are to be borne by the appellant and by any other person.

(7) In exercising its powers under paragraph (6) the court—

(a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required; and

(b) shall be satisfied, before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4).

Suspension of notice

3.—(1) Where—

(a) an appeal is brought against an abatement notice served under sections 65 or 66 of the 2011 Act; and

(b) either—

(i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal; or

(ii) in the case of a nuisance section 63(1)(i) or (j) of the 2011 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant; and

(c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met,

the abatement notice shall be suspended until the appeal has been abandoned by the appellant or decided by the court.

- (2) This paragraph applies where—
- (a) the nuisance to which the abatement notice relates—
 - (i) is injurious to health; or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect; or
 - (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would be proportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice—
- (a) shall include a statement that paragraph (2) applies, and that as a consequence the abatement notice shall have effect notwithstanding any appeal to a court of summary jurisdiction which has not been decided by the court; and
 - (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

Sealed with the Official Seal of the Department of the Environment on ***** 2012.

Wesley Shannon
A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to appeals to a court of summary jurisdiction against abatement notices served under section 65 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 and those served under section 66 of that Act. Regulation 2 sets out grounds on which appeals may be made, prescribes the procedure to be followed in certain cases in which the appellant claims that a notice should have been served on some other person, and the action which the court may take to give effect to its decision on an appeal. Regulation 3 prescribes the cases in which an abatement notice is to be suspended pending the abandonment of, or a decision by a court of summary jurisdiction on, an appeal.

2012 No.

ENVIRONMENTAL PROTECTION

**The Statutory Nuisances (Insects) Regulations (Northern
Ireland) 2012**

Made - - - -

Coming into operation - *1st April 2012*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 63(11)(d) of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011⁽³⁾.

Citation and commencement

4. These Regulations may be cited as the Statutory Nuisances (Insects) Regulations (Northern Ireland) 2012 and come into operation on the 1st April 2012.

“Relevant industrial etc. premises”: further exclusions

5. For the purposes of paragraph (d) of section 63(11) of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, there is prescribed land in respect of which any payment is made under any of the schemes mentioned in the Schedule.

Sealed with the Official Seal of the Department of the Environment on

Wesley Shannon
A senior officer of the
Department of the Environment

⁽³⁾ 2011 c.23 (N.I)

SCHEDULE

Regulation 2

Schemes

<i>Scheme</i>	<i>Legislation</i>
Countryside Management Scheme	Countryside Management Regulations (Northern Ireland) 2001 (S.R. 2001 No. 43) Countryside Management Regulations (Northern Ireland) 2005 (S.R. 2005 No. 268) Countryside Management Regulations (Northern Ireland) 2008 (S.R. 2008 No. 172)
Environmentally Sensitive Areas Scheme	Environmentally Sensitive Areas Designation Order (Northern Ireland) 2001 (S.R. 2001 No. 269) Environmentally Sensitive Areas Designation Order (Northern Ireland) 2005 (S.R. 2005 No. 276)
Farm Woodland Premium Scheme	Forestry Act (Northern Ireland) 2010 (2010 c. 10 (N.I.))
Farm Nutrient Management Scheme	Farm Nutrient Management Scheme (Northern Ireland) 2005 (S.R. 2005 No. 5)
Organic Farming Scheme	Organic Farming Regulations (Northern Ireland) 2008 (S.R. 2008 No. 172)

EXPLANATORY NOTE

(This note is not part of the Order)

Paragraphs (a) to (c) and (e) and (f) of section 63(11) of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 excludes certain types of land from the definition of “relevant industrial, trade or business premises”. Under section 63(11)(d), the Department may prescribe other land which forms part of an agricultural unit (but which is not already excluded under paragraphs (a) to (c) of section 63(11)) to be excluded from this definition.

These Regulations prescribe land in respect of which payments are made under any of the land management schemes described in the Schedule to the Regulations (regulation 2 and the Schedule).

A full regulatory impact assessment has not been produced for these Regulations as they have no impact on business.

SCHEDULE

LIST OF SPORTS

Article 2

- 1) American Football
- 2) Archery
- 3) Association Football
- 4) Athletics
- 5) Australian Rules Football
- 6) Badminton
- 7) Baseball
- 8) Basketball
- 9) Biathlon
- 10) Bobsleigh
- 11) Bowls
- 12) Camogie
- 13) Cricket
- 14) Croquet
- 15) Curling
- 16) Cycling
- 17) Equestrian Sports
- 18) Gaelic Football
- 19) Golf
- 20) Gymnastics
- 21) Handball
- 22) Hockey
- 23) Horse Racing
- 24) Hurling
- 25) Ice Hockey
- 26) Ice Skating
- 27) Lacrosse
- 28) Luge
- 29) Modern Pentathlon
- 30) Motor Cycling
- 31) Motor Sports
- 32) Netball
- 33) Polo
- 34) Roller Sports
- 35) Rounders
- 36) Rowing
- 37) Rugby League
- 38) Rugby Union
- 39) Shooting
- 40) Skateboarding

- 41) Skiing
- 42) Softball
- 43) Swimming (including Diving)
- 44) Tennis
- 45) Triathlon
- 46) Tug of War
- 47) VolleyBall

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the sports that are “relevant sports” for the purposes of section 65(15) of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (“the Act”).

The designation is required so as to identify what is a “relevant sports facility”, as described in section 65(14) of the Act.

A full regulatory impact assessment has not been produced for this Order, as it has no impact on business.