

2012 No. 61

ENVIRONMENTAL PROTECTION

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

Made - - - - - *22nd February 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(a).

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(b); 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);
- (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;

(a) 2011 c. 23 (N.I.)

(b) S.I. 1978/1049 (N.I.19)

- (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 22nd February 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.

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