STATUTORY RULES OF NORTHERN IRELAND

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(**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);

(**1**) 2011 c. 23 (N.I.)
(**2**) S.I. 1978/1049 (N.I.19)

(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;

(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—