



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



ODOUR AND THE LAW

Agenda



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

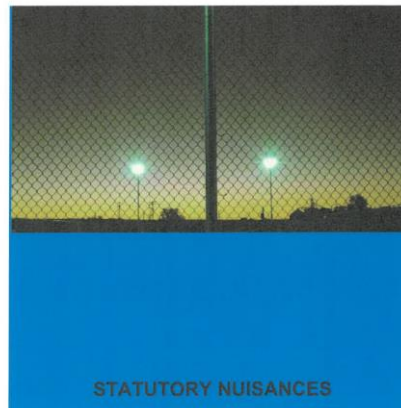
1. Statutory nuisance and the law
2. What is a Statutory Nuisance?
3. Odour Complaint Procedure.
4. Key Issues in determining a Statutory Nuisance.
5. Abatement Notices
6. Best Practical Means Defence.
7. Enforcement Challenges.

Statutory Nuisance Legislation



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Clean Neighbourhoods and Environment Act (Northern Ireland) 2011




2011-12-15 10:10:10

Part 7 - Statutory Nuisances



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

63—(1) the following matters constitute “statutory nuisances”

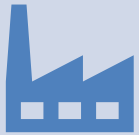


(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

Article 63(1)(d)



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



Only applies to industrial and trade or business premises.

It does not apply to private property.



Effluvia - not in common usage, but includes smell, although the term is wider than this. Suggests something being emitted.

Dictionary definition - *'a slight or invisible exhalation or vapour, especially one that is disagreeable or noxious'*.

Abatement Notices



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



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: - · abatement of a nuisance and the prevention of the recurrence of a nuisance

Restrictions



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



- A District Council cannot take legal proceedings (although it may issue an Abatement Notice), without the Department's consent: *where*
- NIEA could take action under Article 4 of the Environment (NI) Order 2002, or the Industrial Pollution Control (NI) Order 1997.

What is a Statutory Nuisance?



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



**Nuisance is not defined
in the 2011 Act**

**It can be regarded as
interference that
ordinary people would
consider unreasonable
with the personal
comfort or enjoyment or
amenity of neighbours or
the community.**

What Constitutes a Nuisance?



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

- **There is no clear objective definition as to what constitutes a nuisance.**
- **Can scale between mildly irritating and intolerable**
- **The determination of whether a nuisance exists is a matter of judgement.**
- **Determination is based upon the test of what ordinary; decent people would find unacceptable and unreasonable.**

Legal Opinion



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



In proving that a nuisance exists one would have to show that the smell is causing discomfort or inconvenience.



The inconvenience being suffered must be *“more than one of mere delicacy or fastidiousness”*.

It must *“materially” interfere with the ordinary comfort physically of human existence....”*

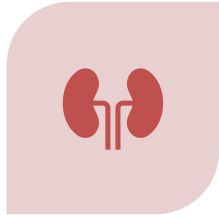


Odours will not constitute a nuisance within the meaning of the Act unless they are severe enough in nature to induce nausea or other symptoms.

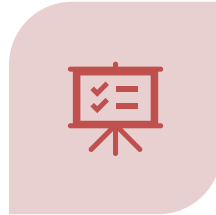
Complaint Procedure - Odour



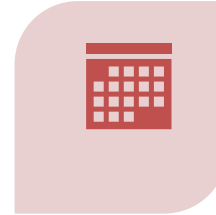
Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



ON RECEIPT OF COMPLAINT EHS NOTIFY OPERATOR OF PREMISES THAT COMPLAINT HAS BEEN RECEIVED REGARDING ODOUR.



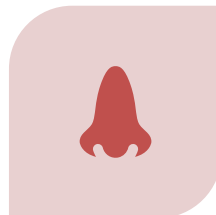
MONITORING SHEETS ARE SENT OUT TO COMPLAINANT TO COMPLETE OVER A SUITABLE PERIOD.



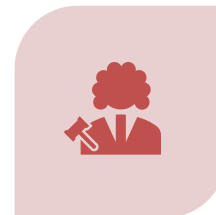
WHEN THESE SHEETS ARE RETURNED A PROGRAMME OF ODOUR MONITORING IS PLANNED .



MONITORING WILL TAKE PLACE OVER A PERIOD TO INDEPENDENTLY VERIFY THE ODOUR COMPLAINED OF



OFFICER'S JUDGEMENT BASED ON EXPERIENCE AND SMELL OBSERVED AT THE COMPLAINANT'S PROPERTY.



ASSESSMENT MADE TO DETERMINE WHETHER OR NOT A STATUTORY NUISANCE EXISTS.

Determining Nuisance



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

8 key issues
when evaluating
whether a nuisance
exists:

1. Impact

2. Locality

3. Time

4. Frequency

5. Duration

6. Convention

7. Importance

8. Avoidability

Impact and Locality



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Impact- Measures the impact of the alleged nuisance on the receptor.

In some instances, the impact can be supported by measurements (such as noise), but in the case of odour it will be the objective view of the Council.

Locality- 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.

Time and Frequency



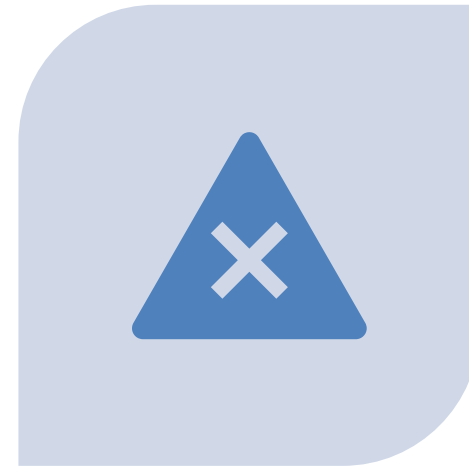
Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



TIME-

MANY NUISANCES HAVE A SIGNIFICANT IMPACT BECAUSE OF THE TIME AT WHICH A NUISANCE OCCURS.

ODOURS ARE OFTEN SUBJECTIVELY MORE ANNOYING DURING PERIODS WHEN MEMBERS OF THE PUBLIC ARE OUTDOORS.



FREQUENCY-

NUISANCES THAT OCCUR FREQUENTLY OR CONTINUOUSLY ARE MORE LIKELY TO BE DETERMINED A NUISANCE (DEPENDING TO SOME DEGREE ON THE IMPACT).

Duration and Convention



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



Duration- in general short-term events would be regarded differently to longer period or continuous impact.



Convention- this can be important in determining what a reasonable person would find objectionable.

E.g. some people may find the spreading of slurry offensive. However, if the practice is widespread and accepted Courts are unlikely to find a nuisance.

Importance and Avoidability



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



IMPORTANCE-

THE IMPORTANCE TO A COMMUNITY IS OFTEN A KEY CONSIDERATION.



AVOIDABILITY-

EVEN THOUGH THE ACTIVITY MAY HAVE SOCIAL IMPORTANCE THERE SHOULD BE A BALANCE AS TO WHETHER REASONABLE STEPS HAVE BEEN TAKEN TO MINIMIZE THE IMPACT.

Abatement Notices



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



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: -



abatement of a nuisance



prevention of the recurrence of a nuisance

Appeals (Subsection 65(8))



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



A person served with an abatement notice may appeal against the notice to a court twenty-one days.

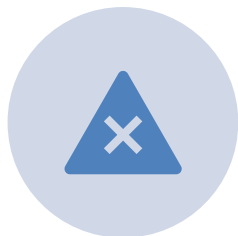


On hearing the appeal, the court may quash or vary the notice or dismiss the appeal.

“Best Practicable Means” Defence



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



The defence that ‘best practicable means’ were used to prevent the effects of a nuisance is available for prosecutions involving a breach of an abatement notice.



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, building, installation, maintenance and operation of plant and machinery, and buildings and structures;



(c) the test is to apply only so far as compatible with any duty imposed by law and safe working conditions

Enforcement Challenges



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



THERE IS NO WAY OF MEASURING ODOUR. IT IS SUBJECTIVE.



ODOUR IS OFTEN WEATHER DEPENDENT.



EHS ARE RELIANT ON THE COMPLETION OF MONITORING FORMS FROM COMPLAINANTS TO GIVE BACKGROUND EVIDENCE.



EHS WILL ALSO RELY ON COMPLAINANT'S STATEMENTS IN COURT.



IT IS A MATTER FOR THE COURTS TO DETERMINE WHETHER BPM APPLIES.



IT IS FOR THE PERSON RELYING ON THE DEFENCE TO ESTABLISH THAT BPM HAS BEEN USED.



WHERE COUNCIL CONSIDERS THAT A NUISANCE EXISTS, BUT BPM HAS BEEN USED, THERE IS STILL THE DUTY TO SERVE AN ABATEMENT NOTICE.



WHERE BPM IS BEING USED, COUNCIL MAY BE EXPOSED TO EXTENSIVE COSTS SHOULD A CASE GO TO APPEAL FOR NON-COMPLIANCE.

Dog Control



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



The Dogs (Northern Ireland) Order 1983



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



Regulation 3

If you own a dog it must have a licence.



A licensed and microchipped dog is much easier to reunite with its owner should it go missing.

Penalty for keeping dog without a licence



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



17.—(1) Any person who—



Owens a dog but does not have a licence...



shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200.

Penalty for a dog straying



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

22.—(1) Where any dog strays the keeper of the dog shall be liable to a fine not exceeding £200.

(2) The keeper of a dog shall not be convicted of an offence if he proves that at the time when the dog strayed it was in the charge of some other person whom he believed to be a fit and proper person to be in charge of the dog.

Definition of stray dog



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

A stray dog is one;

(a) which is off land owned by the keeper of the dog,

(ii) off other land on which it may be by permission of the owner; and

(b) which is unaccompanied by any person;

Seizure of stray dog



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

23.(1) An officer may seize any dog which is a stray dog.



(2) A dog seized as a stray dog may be taken to a dog pound and detained by the district council until its keeper has claimed it and paid all expenses incurred by reason of its detention.

What Council do with the dog



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



Where the keeper has not claimed the dog within 5 days or the keeper has not paid the due expenses:



the Council may sell or destroy the dog in such a manner as to cause as little pain as possible.

Control of dogs on certain roads and on land.

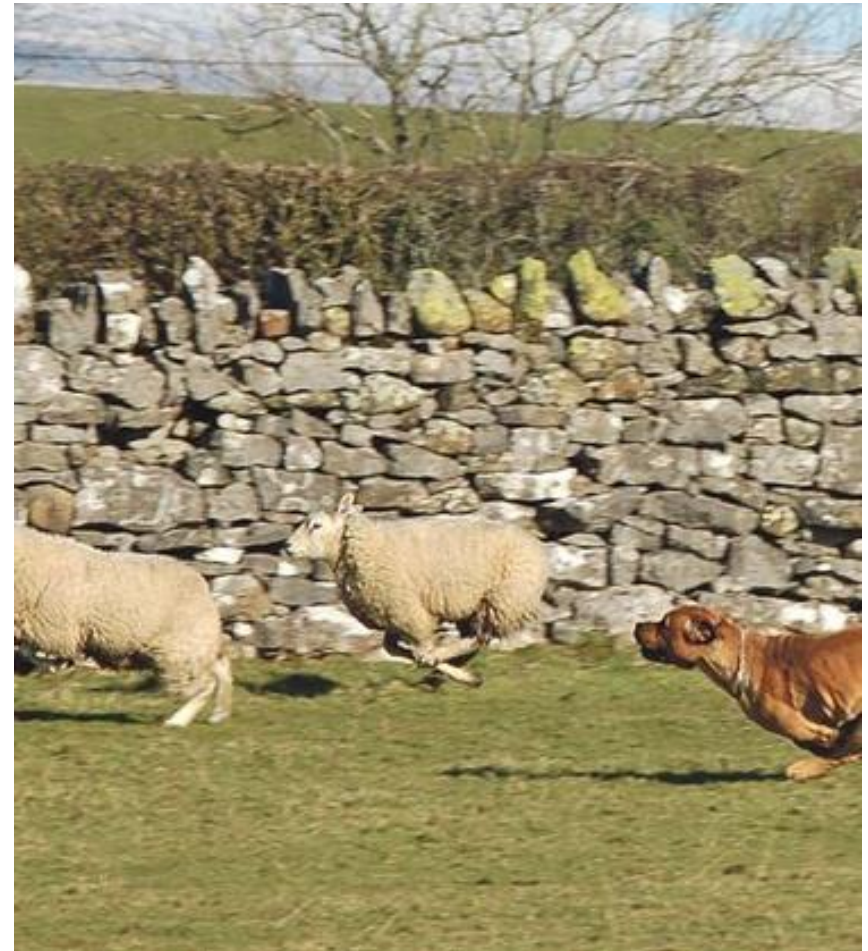


Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

- **25.(1)** A keeper of a dog shall not permit that dog to be on any road or on any land where livestock are present and have a right to be there;

unless the dog is under control.

- Any person who contravenes the above shall be guilty of an offence and shall be liable to a fine not exceeding £200.



Defences



Article 25 shall not apply to a dog—

(a) on land owned or occupied by its keeper

(b) on other land with the owners permission

(c) while being used for tending sheep or cattle.

(d) while being used in a pack of hounds;

(e) while being used for police purposes;

Attacks on livestock and certain other animals



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



28.(1) Any person who sets a dog on any livestock, or other animal is guilty of an offence and liable to a fine not exceeding level 4 (£2500) on the standard scale.

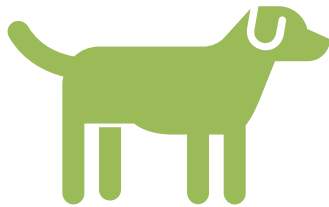


(2) If a dog worries livestock, or attacks and injures any other animal, the keeper of the dog is guilty of an offence and liable to a fine not exceeding level 3 (£1000) on the standard scale.

Defence for livestock attack



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



Article 28 does not apply to a dog while being used for police purposes.



A person is not guilty of an offence by reason of anything done by the dog if at the time the livestock or other animal is trespassing on any land.

Attacks on persons



29.—(1) Any person who sets a dog on any other person is guilty of an offence or, if the dog injures the person attacked, an aggravated offence under this paragraph.

(2) If a dog attacks any person, then the keeper of the dog is guilty of an offence or, if the dog injures the person attacked, an aggravated offence under this paragraph.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on conviction to imprisonment or a fine not exceeding level 5 (£5000).

Defences



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Article 29 does not apply to a dog while being used for police purposes.

A person is not guilty of an offence if the person set on or attacked is trespassing on land; and

(b) the dog is kept by, the occupier of that land; or

(ii) in the charge of a person authorised by the occupier to remove that person from that land.

Defences to legal proceedings for shooting dogs



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

30.—It is a defence to an action against a person to recover damages in respect of, and to any charge arising out of, the shooting of a dog for that person to prove—

(a) that the dog was worrying or was about to worry livestock and there were no other reasonable means of ending or preventing the worrying; or

(b) that the dog had been worrying livestock, had not left the vicinity and was not in the charge of any person and there were no practicable means of ascertaining to whom the dog belonged.

Defence to Article 30



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Article 30 shall be deemed to have been satisfied if that person believed that it was satisfied and had reasonable ground for that belief.

Article 30 shall not confer a defence on any person unless he proves that—

(a) the livestock land was occupied by him or by any person under whose express or implied authority he was acting.

(b) within 48 hours notice of the shooting is given to the nearest police station.

Control Conditions



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

30A—(1) This Article applies where an officer has reasonable cause to believe that an offence has been committed in respect of a dog under—

(a) Article 22(1) (dog straying);

(b) Article 25(3) (control of dogs on certain roads or lands);

(c) Article 28(1) or (2) (dog attacking livestock or other animals)

(d) Article 29(1) or (2) (dog attacking person).



Control Conditions

30B—(1) The control conditions which may be imposed on a dog licence by a notice under Article 30A are—

(a) that the dog be securely fitted with a muzzle when in a public place;

(b) that the dog be kept under control when in a public place;

(c) that the dog (when not under control) be kept securely confined in a building, yard or other enclosure;

(d) that the dog be excluded from any place, or any type of place, specified in the notice;

(e) that the dog (if male) be neutered before the end of the period of 30 days from the date on which the notice takes effect;

(f) that the keeper, with the dog, attend and complete a specified course of training in the control of dogs before the end of the period of 6 months from the date on which the notice takes effect.

Contraventions of control conditions



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council



30F—(1) If any control condition of a dog licence is contravened, the keeper of the dog is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 (£2500) on the standard scale.



(2) It is a defence for a person charged with an offence under this Article to show that he had taken all reasonable steps to prevent contravention of the control condition.

Power of court to order destruction of dogs



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

33. Where it appears to a court that a dog has attacked any person or has worried livestock, the court shall unless mitigating factors apply—

(a) make an order directing the dog to be destroyed; or

(b) make an order directing the dog to be destroyed unless such measures as are specified in the order are taken to prevent the dog being a danger to the public or to livestock.



- **33A.—(1)** Where a person is convicted of an offence under:
 - Article 25A (dog fighting) or
 - Article 29 (attack on person)the court may, in addition to any other penalty order that person to be disqualified, for such period as the court thinks fit, for keeping a dog.

Powers of officers



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

41.—(1) Where an officer has reasonable ground to believe that an offence under this Order is being committed, request the name and address of any person who is in charge of the dog

(b) seize any dog and detain it for physical examination by himself or by a veterinary surgeon where the officer considers examination by a veterinary surgeon to be necessary.