



Department of the  
**Environment**

[www.doeni.gov.uk](http://www.doeni.gov.uk)

**ENVIRONMENTAL POLICY DIVISION**

**DEFACEMENT REMOVAL NOTICES:  
STATUTORY GUIDANCE FOR DISTRICT  
COUNCILS**

**A CONSULTATION PAPER**

**CLOSING DATE – 16 February 2012**

# CONTENTS

	<i>Page</i>
RESPONDING TO THIS CONSULTATION	3
INTRODUCTION	7
CONSULTATION ISSUES	8
ANNEX A DRAFT STATUTORY GUIDANCE	10
ANNEX B LIST OF CONSULTEES	25

## RESPONDING TO THIS CONSULTATION

Information about this publication and further copies are available from the address below. This document is also available on the DOE website<sup>1</sup> and can also be made available in other formats. Please contact the Department to discuss your needs.

### **How To Respond**

Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent.

Please send your response to:

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**The closing date for responses is 16 February 2012.**

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<sup>1</sup> [http://www.doeni.gov.uk/clean\\_neighbourhoods.htm](http://www.doeni.gov.uk/clean_neighbourhoods.htm)

## Publication Of Responses

In line with the Department's policy of openness, at the end of the consultation period copies of the responses received may be made publicly available, upon request, from the Department. The information they contain may also be published in a summary of responses.

The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response please read the paragraphs below on the confidentiality of consultations which provide guidance on the legal position concerning any information provided by you in response to this consultation.

If you do not consent to this, you must clearly request that your response is treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which the Department will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000<sup>2</sup> and the Environmental Information Regulations 2004<sup>3</sup>.

## Freedom of Information Act 2000

The Freedom of Information Act gives the public a right of access to any information held by a public authority, in this case, the Department. This right of access to information includes information provided in response to a consultation exercise. The Department cannot automatically consider as confidential information supplied to it in the course of a consultation exercise. However, the Department does have a responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to this consultation will not be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act<sup>4</sup> provides that:

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<sup>2</sup> 2000 c. 36

<sup>3</sup> S.I. 2004/3391

<sup>4</sup> <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

- (a) The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- (b) The Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature;
- (c) Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office.<sup>5</sup>

## **Equality Issues**

Under section 75 of the Northern Ireland Act 1998<sup>6</sup>, public authorities have a statutory duty to promote equality of opportunity. An equality screening was completed for the Clean Neighbourhoods and Environment Bill (NI) 2010<sup>7</sup> which concluded that these proposals do not significantly impact on equality of opportunity on any of the groups specified in section 75. There is no further need to screen any guidance flowing from that enabling legislation.

The Equality Commission will receive copies of the consultation document as part of this consultation. We will take into account any comments that the Commission might have.

## **Human Rights Issues**

The Human Rights Act 1998<sup>8</sup> implements the European Convention on Human Rights. The 1998 Act makes it unlawful for any public authority to act in a way that is incompatible with these rights. We believe that the proposals in this consultation document are compatible with the Human Rights Act, but would welcome any views that you might have.

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<sup>5</sup> See <http://www.ico.gov.uk/> for details

<sup>6</sup> 1998 c. 47

<sup>7</sup> [http://www.doeni.gov.uk/index/information/equality\\_unit.htm](http://www.doeni.gov.uk/index/information/equality_unit.htm)

<sup>8</sup> 1998 c. 42

The Human Rights Commission will receive copies of the consultation document as part of this consultation. We will take into account any comments that the Commission might have.

### **Regulatory Impact Assessment**

A regulatory impact assessment on the Clean Neighbourhoods and Environment Bill can be accessed on the Department's website<sup>9</sup>.

### **Rural Proofing**

Rural proofing is a process to ensure that all relevant Government policies are carefully and objectively examined to determine whether or not they have a different impact in rural areas from that elsewhere, because of the particular circumstances of rural areas, and where necessary, what policy adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural community.

The Department's Clean Neighbourhoods agenda is intended to improve the environmental quality of our public spaces and local neighbourhoods. In the main the proposals are intended to help district councils across all of Northern Ireland to deal more effectively with a range of low level local environmental problems many of which affect the general appearance and cleanliness of their respective areas. Generally the proposals are more likely to be used where the need is greatest in deprived and built up areas, however, councils will also be able to apply any new powers in rural areas as and when required. The Clean Neighbourhoods agenda does not, therefore, have a different impact in rural areas and does not affect accessibility to public services in rural areas.

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<sup>9</sup> [http://www.doeni.gov.uk/pdf\\_version\\_of\\_clean\\_neighbourhoods\\_consultation\\_document.pdf](http://www.doeni.gov.uk/pdf_version_of_clean_neighbourhoods_consultation_document.pdf)  
(pp. 134-158)

## INTRODUCTION

The Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (“the 2011 Act”), which received Royal Assent on 4 May 2011, strengthens the legislative powers available to district councils to help them deal more effectively with a range of local environmental quality problems such as dog fouling, litter, graffiti and fly posting, nuisance parking, abandoned vehicles, statutory nuisance and noise. It is the Department’s intention to bring the Act into operation in April 2012.

Before the 2011 Act comes into operation, it will be underpinned by subordinate legislation and the Department will also be issuing a series of guidance notes to assist district councils and others to understand, and, where appropriate, make use of the new powers.

This document contains guidance in draft form for district councils on new powers to issue defacement removal notices which will be available to them following the introduction of the 2011 Act.

**It must be emphasised that this is not a consultation on graffiti and fly-posting policy but solely on the content of the guidance for district councils and the Department would welcome comments on that basis.**

## BACKGROUND

### **Defacement Removal Notices: Sections 31 to 35 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011**

1. Sections 31 to 35 of the 2011 Act enable district councils to issue notices requiring the removal of graffiti and fly posting to statutory undertakers, educational institutions and others responsible for street furniture and other “relevant surfaces” where these are defaced in a manner that is detrimental to the amenity of the area or is offensive. If a “Defacement Removal Notice” (“DRN”) is not complied with, the district council can remove the defacement itself and reclaim the cost of doing so.
2. Section 33(1) of the 2011 Act places a requirement on the Department to issue statutory guidance to district councils for the purposes of sections 31 and 32. Under section 33(2) a district council shall have regard to any guidance issued to it.
3. A copy of the draft guidance is attached at Annex A and the Department welcomes comments on any aspect of it.

DRAFT GUIDANCE



# DEFACEMENT REMOVAL NOTICES

**Guidance for District Councils on  
Sections 31 to 35 of the Clean Neighbourhoods  
and Environment Act (Northern Ireland) 2011**

## 1. OVERVIEW

- 1.1 Sections 31 to 35 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (“the 2011 Act”) enable a district council to serve a ‘defacement removal notice’ (“DRN”) on the owners, occupiers, operators (such as telecommunication companies and outdoor advertising companies) of ‘relevant surfaces’ (including street furniture), statutory undertakers and educational institutions whose property is defaced with graffiti and/or fly-posting.
- 1.2 In relation to fly-posting, DRNs may be used to deal with old posters and remnants of fly-posting but where new cases occur, action should be taken wherever possible, using –
  - (a) section 26 Of the 2011 Act to issue a fixed penalty notice to the person who personally affixed or placed the fly-poster; and/or
  - (b) Article 84 of the Planning (Northern Ireland) Order 1991 (“the 1991 Order”) to pursue the beneficiaries or those responsible for the fly-posting (further information is given at paragraphs 2.10 – 2.15).
- 1.3 This guidance is issued (insofar as it is for the purposes of sections 31 and 32) under section 33(1) of the 2011 Act. Section 33(2) requires district councils to have regard to any guidance issued under section 33(1).
- 1.4 Upon commencement of sections 31 to 35, it is anticipated that there will be significant interest in the new powers on the part of district councils. However, it is important that councils are patient in undertaking the initial processes required by the statutory guidance before issuing a DRN.
- 1.5 District councils should also have regard for, and be sympathetic to, the demands which are likely to be placed on companies owning significant amounts of property vulnerable to graffiti and fly-posting and which may, as a result, receive many requests to enter into voluntary partnership arrangements (see paragraph 2) with councils. Likewise, property owners should have regard for, and be sympathetic to the demands and pressures placed on district councils from the public’s desire to

live in clean and safe communities and endeavour to respond to requests in a reasonable manner.

## **2. GENERAL PRINCIPLES**

### **Partnership forming**

- 2.1 District councils should endeavour to make reasonable attempts to enter into partnerships with property owners. All parties should work in constructive partnership to remove graffiti and fly-posting within agreed times and minimise the need for DRNs. For example, in easy-to-access busy areas removal may be carried out more quickly, whereas on land requiring specialist access, removal may require a longer planning time. It should be remembered that property owners are the victims of graffiti and fly-posting too and the cost of its removal, extrapolated across Northern Ireland, can run into millions of pounds. Requests for graffiti and fly-posting cleaning should therefore be reasonable and proportionate.
- 2.2 Nevertheless, property owners should remember that graffiti and fly-posting blight communities and contribute to people's fear of crime. Therefore, as a matter of best practice, maintenance programmes should usually factor-in graffiti and fly-posting removal. Through the formation of partnerships and the development of mutually agreeable arrangements, issuing DRNs should be a last resort measure. Working in partnership with owners and occupiers responsible for affected surfaces is the ideal and preferred option.
- 2.3 It is important to note that there are no prescribed models for the development of partnership arrangements. Arrangements are developed voluntarily and their existence and nature will vary based on local circumstances and the scale of the problem caused by graffiti and/or fly-posting.

### **Definitions & Interpretation**

#### **Land covered**

- 2.4 Section 31(8) and (9) of the 2011 Act defines the surfaces covered by the new powers. These are:

*(a) the surface of any street or of any building, structure, apparatus, plant or other object in or on the street.*

This covers property like cable boxes, telephone kiosks, bus stops and shelters. A privately-owned building facing onto a street, such as a shop, will not normally be covered, as the land on which it is built will be adjacent to the street; it will not be ‘in or on the street.’ Neither will parks, open spaces, gardens or other similar areas off the street be covered.

“Street” is defined as the whole or any part of any of the following, irrespective of whether it is a thoroughfare—

- any road, highway, lane, footway, alley or passage,
- any square or court, and
- any land laid out as a way whether it is for the time being formed as a way or not.

Where a street passes over a bridge or through a tunnel, references to the street include that bridge or tunnel. However, in order for a DRN to be served, the street must be public land.

*(b) the surface of any land owned, occupied or controlled by a statutory undertaker (such as rail operators, inland waterway and port operators and airport operators) or an educational institution (including its governing body) or of any building, structure, apparatus, plant or other object in or on any such land.*

Graffiti and fly-posting on surfaces not ‘in the street’ are only covered when the surfaces are owned by statutory undertakers or educational institutions as defined in the 2011 Act. Further, such graffiti and/or fly-posting must be on a place to which the public has access or which is visible from such a place. Surfaces viewed from a moving train are covered only when that property belongs to a statutory undertaker or educational institution as defined in the 2011 Act.

## **Hospital and other Healthcare Land**

2.5 The National Health Service (NHS) and other NHS organisations such as NHS Trusts are not classed as statutory undertakers or

an educational institution to which the powers under this section apply. However, where street furniture is located within, or around the boundary of hospital or other NHS healthcare land, district councils should endeavour to enter into partnerships with hospital management in agreeing suitable cleaning times as early as possible. It is important that graffiti and fly-posting removal does not pose a risk to or cause any unnecessary interference with hospital or other NHS healthcare business or block access to emergency services.

### **Definitions of 'offensive' and 'detrimental'**

2.6 To qualify for removal under the 2011 Act, the defacement must be detrimental to the amenity of an area or be offensive.

- 'Offensive' applies where graffiti is racially offensive (or hostile to a religious group), sexually offensive, homophobic, depicts a sexual or violent act or is defamatory. Offensive graffiti should be prioritised for speedy removal (but see also paragraphs 2.7 – 2.10).
- 'Detrimental.' Both graffiti and fly-posting can be detrimental to the amenity of an area. Simple 'tagging', for example, can be 'detrimental' as can remnants of old flyers and posters stuck to surfaces. District councils should take a proportionate view of whether a particular instance of graffiti and/or fly-posting is detrimental. Relevant factors might include:
  - the surface area covered by the graffiti and/or fly-posting;
  - local complaints; and
  - the degree and nature of the graffiti and/or fly-posting problem in the area.

### **Other Powers to Deal with Graffiti and Fly-posting**

2.7 DRNs are just one tool available to district councils to help them tackle graffiti and fly-posting and it is not possible, or appropriate, to use them in all cases. There are other powers available to councils which they should make use of in the first instance to claim the costs of removal from the perpetrators of the crime and to pursue offenders.

(a) Power to Remove or Obliterate

2.8 District councils have powers under Article 18 of the Local Government Miscellaneous Provisions) (Northern Ireland) Order 1985 (the 1985 Order) to remove or obliterate –

- any graffiti which, in the opinion of the council, is detrimental to the amenity of any land in its district; or
- any placard or poster which is displayed in its district and which, in the opinion of the council, is so displayed in contravention of the Planning (Control of Advertisements) Regulations (NI) 1992 (the Advertisement Regulations).

2.9 Section 36 of the 2011 Act has substituted a new Article 18 into the 1985 Order to help overcome some the difficulties that district councils have encountered when using these powers in the past. New Article 18 provides that –

- in circumstances where a district council gives notice of its intention to remove or obliterate any graffiti, placard or poster, the period of notice is reduced from 14 days to 2 days;
- the landowner or occupier, who in all likelihood is the victim of the graffiti or fly-posting, is not responsible for the cost of removing it and that the cost is borne, where possible, by the person who committed the act of graffiti or fly-posting or the person whose goods, trade, business or other concerns are publicised by it;
- existing loopholes which allow the beneficiaries of fly-posting to avoid liability and to continue to benefit from free illegal advertising are closed; and
- compensation can be claimed by a person whose property is damaged by district councils exercising the power to remove or obliterate graffiti, placards or posters. Compensation cannot be claimed by the person who displayed the graffiti, placard or poster or caused it to be displayed.

2.10 DRNs are not intended to be used to deal with new cases of graffiti and fly-posting. In such cases, the powers available to district councils under the 1985 Order will be more appropriate, more effective and quicker. Rather, DRNs are meant to enable district councils to address situations in which relevant surfaces

have been defaced both by graffiti and fly-posting over time. However, they can be used where defacement is caused solely by fly-posting; for example, by a build-up of old flyers and stickers over time; or solely by graffiti.

#### (b) Power to Issue Fixed Penalty Notices

2.11 The 2011 Act gives an authorised officer of a district council the power to issue fixed penalty notices in respect of certain graffiti and fly-posting offences. The offences are –

- an offence under Article 33 of the Road Traffic Regulation (Northern Ireland) Order 1997 (interference with, or damage to, traffic signs), which involves only an act of defacement;
- an offence under Article 87(1) of the Roads (Northern Ireland) Order 1993 (painting, making marks or displaying advertisements on roads);
- an offence under Article 84(2) of the Planning (Northern Ireland) Order 1991 (displaying advertisement in contravention of regulations made under Article 67 of that Order).

#### (c) Power to Prosecute

2.12 In the case of fly-posting, in addition to the defacement being removed through the use of a DRN or the powers under the 1985 Order, district councils may, by virtue of section 116 of the Local Government Act (Northern Ireland) 1972 take prosecutions under the Planning (Northern Ireland) Order 1991 (the 1991 Order) against those who fly-post or those who benefit from it.

2.13 Under Article 84 of the 1991 Order, it is an offence to display an advertisement in contravention of the Advertisement Regulations. A person found guilty of this offence may be fined up to level 4 (currently £2,500) in a magistrates' court, with the possibility of further daily fines of up to one tenth of that level for each subsequent day in the case of a continuing offence. Article 84(3) of the 1991 Order provides that someone upon whose land an unlawful advertisement is displayed, or whose goods, trade, business or other concerns is the subject of such an advertisement is deemed to have displayed it even though

they may not have personally affixed or placed it. The 2011 Act has amended the defence in Article 84(3) so that a landowner or beneficiary charged with the offence of displaying an illegal advertisement has to prove either that the advertisement was displayed without their knowledge; or that they took all reasonable steps to prevent the display, or subsequently, to secure its removal. This makes it more difficult for them to avoid prosecution simply by claiming that they hadn't consented to the advertisement.

### **3. PROCEDURE**

#### **Initial process**

- 3.1 All parties should act with reference to the principle that graffiti and fly-posting should be removed as soon as possible through good partnership working and a DRN should only be issued as a last resort.
- 3.2 The district council should initially identify the local companies/organisations to be affected and make contact with them to make them aware of the defacement on their property. The council and each company/organisation involved should then nominate a single point of contact. Together, contact points should identify which company/organisation owns which property affected.
- 3.3 The Department expects district councils to afford companies/organisations sufficient time to consider any proposals to enter into a voluntary partnership arrangement, in particular where such companies/organisations are national bodies owning a significant amount of property vulnerable to graffiti and/or fly-posting. Likewise the Department would expect them to respond to such proposals promptly.
- 3.4 A district council should only consider issuing a DRN where it can demonstrate that it has made reasonable attempts to contact the owner of the affected property and enter into a voluntary partnership agreement. It is clear that 'reasonable attempts' would mean more than one letter or one phone call. However, if after several attempts to make contact, there is no

response or if a contact point is not nominated, the council may proceed to issue DRNs if necessary.

### **Process for issuing a notice**

- 3.5 Before issuing a DRN, a district council should have alerted the owner of the company which has been subject to graffiti and/or fly-posting and given them a reasonable opportunity to remove the defacement first. If a DRN is being issued to a company, it must be sent to the secretary of the company at the registered office address. However, a copy of the DRN should also be sent to the locally-nominated contact, if one has been provided.
- 3.6 The notice period of not less than 28 days should start on the date on which the DRN is served. Councils should take a reasonable approach to any requests for an extension of time within which to reply.
- 3.7 Councils should act consistently and impartially with the property owners with whom they have dealings.
- 3.8 The DRN should require removal of the defacement, which, in the case of graffiti, may involve repainting the whole surface or just the area covered by graffiti. Repainting should aim to restore the surface's original appearance as far as possible, but any requirement to repaint must be proportionate. In cases where complete repainting is likely to damage electrical equipment, only the area directly affected should be repainted.
- 3.9 District councils should retain dated photographic evidence of each case of graffiti and/or fly-posting that is the subject of a DRN. This should be shared with the owner in the case of any dispute or at the request of the owner.

### **Procedures for dealing with repeat defacement**

- 3.10 Where the same property is repeatedly targeted, partnerships may wish to consider the problem of graffiti and fly-posting in the wider context of anti-social behaviour. This approach may provide more effective means of detection and enforcement action than issuing repeated DRNs. Alternatives could include additional enforcement action to target perpetrators, such as surveillance, or by designing out the crime such as relocating

the property or through the use of anti-graffiti paint/anti-fly-posting coatings, e.g. stippled surfaces. In all circumstances, district councils, owners and the police should share information and best practice on any enforcement action undertaken.

## **CLEANING**

3.11 The powers of the district council following non-compliance with a DRN are restricted to actions to 'remove, clear, or otherwise remedy the defacement'. No other interference with the property is permitted. When removing graffiti and/or fly-posting, council employees must use accredited/approved contractors and materials that comply with the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 (COSHH). Specifically they:

- must not use high-pressure jet washers or steam cleaners on any cabinets containing electronic equipment.
- must not use paint or sealant that may restrict or block the flow of ventilating air to equipment, or seize locks or hinges.
- must use paint types with acceptable specification.
- must be made aware, before commencing work, of the 240v mains electricity supply to all payphones and many street cabinets.

Further guidance is provided below and in Section 4 – Access and Safety.

### **Street Cabinets**

3.12 Street cabinets are frequently subjected to graffiti and/or fly-posting. They house electronic components that must be readily accessible to engineers, or that are unsuitable for installation underground and they contain sensitive equipment, the value of which rises above £30,000 in some cabinets. They are installed using powers under the Electronic Communications Code (Telecommunications Act 1984 Schedule 2, as amended by Schedule 3 to the Communications Act 2003) and must be maintained under the Streetworks (Northern Ireland) Order 1995 in the interest of public safety.

3.13 The increasing roll-out of broadband internet services will see an increasing demand upon the equipment housed within street cabinets, as service providers seek to maximise the cabinet occupancy (or efficiency) and avoid unnecessary construction on roads and footpaths. Any electrical damage arising from cleaning operations is likely to lead to loss of service to customers for a period of time. It is important to remember that service providers' customers are also ratepayers.

### **Telecommunications Cabinets and Payphones**

3.14 All cleaning materials must be compliant with COSHH and COSHH specification sheets should be available to support this. All materials carried must be appropriately labelled, and should be approved by the cabinet owner prior to use. Any proposed changes to materials used must be notified to the cabinet owner with a minimum of one month's notice.

3.15 In order to prevent damage to anti-corrosive (anti-rusting) and thermal characteristics of cabinets, the use of abrasive cleaning materials or fluids is not to be permitted on cabinets.

3.16 In order to prevent unnecessary damage to polycarbonate windows the use of abrasive cleaning materials, such as green scouring pads, is not to be permitted on payphones.

3.17 When cleaning payphones, it is particularly important that care is taken to ensure that water is prevented from entering the terminal box, light fittings or payphone mechanism.

3.18 District councils must consult as appropriate on the approval or appointment of contractors.

## **4. ACCESS AND SAFETY**

4.1 The safety of those cleaning property and of the general public is paramount. District councils should work with partners to ensure their health and safety obligations are met.

## **Access to track/rail property**

- 4.2 The removal of graffiti and/or fly-posting from surfaces belonging to NI Railways may require the carrying out of special safety procedures including temporary track closures ('possessions').
- 4.3 Any work may need to be co-ordinated with other activities in order to avoid excessive costs. Accordingly, district councils must consult with statutory undertakers as to what would be a reasonable period of time for compliance prior to service of a defacement removal notice. If the council still views the serving of a DRN as appropriate, then the period of time for compliance within such DRNs should reflect those consultations.
- 4.4 In the case of railway land, district councils must not under any circumstances enter nor purport to authorise entry by any person. Only NI Railways is in a position to authorise entry by persons in possession of appropriate railway safety certification. A failure to comply with this instruction is likely to place the council concerned in breach of its own duties under the Health and Safety at Work, etc. (Northern Ireland) Order 1978. The officer(s) of the council authorising entry may in such circumstances also render themselves liable to prosecution in their personal capacity.

## **Access to Ports and Airports**

- 4.5 Access to ports and airports is strictly controlled because of the risks to safety and security; in particular access to the airside at commercial airports is subject to stringent security checks. All UK port facilities handling international traffic are subject to the International Ship and Port Facility Security Code as enforced by the Ship and Port Facility (Security) Regulations 2004 (S.I. 2004/1495, as amended). This international security framework implemented on 1 July 2004, requires port facilities to control access into any areas that have been designated as Restricted Areas by the Department for Transport. Access control may include, but is not limited to staff and visitor pass systems and a documentation, person, baggage and vehicle search regime.

- 4.6 Additionally ports and airports generally cover an extensive area and may have complex and heavily used traffic routes. Contractors and staff carrying out work at ports and airports should contact the harbour authority or airport authority responsible for the site to arrange access before carrying out any work. To ensure that contractors and staff do not stray into areas where they could be endangered by aircraft or heavy plant machinery, they **MUST** be escorted to and from the place where they need to work.
- 4.7 When working airside at airports contractors and staff should take particular care to avoid leaving any loose debris which can be sucked into aircraft engines. Any such items (known as FOD - flying object debris) should be placed in the bins provided for the purpose.

#### **Dealing with electrical and traffic control equipment**

4.8 Street cabinets are essential to the provision of communication services and traffic control. They both house critical electrical and electronic equipment, and serve as access points for key maintenance. The avoidance of the effects of dampness or water penetration is imperative, and common to all service providers' and traffic street furniture. Each type of cabinet has different specifications and requirements in seeking to minimise such effects. These are set out in terms of network delivery, integrity and management, in addition to obligations under the Health and Safety at Work, etc. Order (Northern Ireland) 1978. This is a complex area and therefore it is not possible to provide definitive advice in relation to electrical equipment in this guidance: however, district councils should be aware of the following points:

- All cabinets house equipment that will be sensitive to the effects of dampness and water penetration.
- In the case of telecommunications, the degree of any service loss (commonly referred to as 'outage') caused by cleaning cabinets will probably be down to the degree of penetration of water (or any other cleaning fluids), the degree of sensitivity of the housed equipment and the timeframe to effect repairs, which in turn might be dictated by the delivery time of replacement pieces of equipment.

- Electrical supply may be provided from underground cables or via overhead lines
- To simplify risk assessments, district councils should assume that ALL cabinets have electrical connection.
- Cabinets will be of different sizes but, more importantly, may perform different network-delivery functions within a service provider's network architecture, or traffic control systems.
- There may be different network architectures in a particular district council area and therefore generic grouping of cabinet types (and associated electrical requirements) will not necessarily be possible in all cases.
- Ventilation louvres (fixed or variable) provide ventilation to cabinets, which becomes critical in hot weather conditions. Equipment is strategically placed close to the louvres in order to maximise cooling effects. Louvre points should therefore be treated as 'sensitive' zones.

4.9 In consideration of the above points it is essential that service providers, transport managers and district councils work closely together and agree the following points:

- Need for accreditation by owners of third parties working on equipment.
- Method statements to be adopted by district councils.
- Any special measures relating to a cabinet which is the subject of a DRN.
- Stand-by and call-out procedures in the event of accidents and damages.
- Liabilities in the event of any accidents.
- Liabilities in the event of damage.

4.10 No third parties shall work on equipment without the owners' permission.

## **5. EXPENDITURE**

### **Recovery of expenditure**

- 5.1 District councils may only recover those costs they have incurred in cleaning the property concerned and should not include any other overheads. These costs should normally roughly correspond to the unit cost of cleaning their own property – unless a good explanation for additional expense incurred can be demonstrated.
- 5.2 Councils should not seek to use these powers as a means of raising additional revenue. The council will invoice the company for the amount due and payment should be made within 60 days.
- 5.3 Where district councils take action in default following non-compliance of a DRN, cost recovery is restricted to costs to achieve removal and does not include any measure to prevent further defacement. In some situations, the cost of removal and the basic repainting/repair may be the same cost as repainting with a preventative coating (for the first time). However, in circumstances when acting in default following non-compliance with a DRN it is recommended that work undertaken relates to removal and the basic repainting/repair only and does not include recoating with new preventative measures. An exception to this may be in circumstances where existing partnership arrangements have clearly stated that the new coatings of preventative paints is the preferred option for all work undertaken.

## **6. APPEALS**

- 6.1 The right of appeal and grounds for appeal are as set out in section 34 of the 2011 Act. Only the organisation served with a DRN has the right of appeal against that notice. Those contemplating appeal should attempt to negotiate the terms of the DRN with the district council before making a formal appeal whilst being ever mindful of the time limit within which an appeal must be lodged.

6.2 Appeal is to a magistrates' court and must be made within 21 days of the DRN being served. The relevant council must also be informed as soon as appeal is made. When an appeal is lodged, the effect of the DRN is suspended pending the outcome of that appeal. If the appeal is lost, the magistrates will set a time for removal as part of their ruling.

LIST OF CONSULTEES

arc21  
 Association of Airport Operators  
 Attorney General  
 Belfast City Airport  
 Belfast Harbour Commissioners  
 Belfast International Airport  
 Belfast Solicitors Association  
 British Library  
 BT  
 Catholic Bishops of NI  
 Chartered Institute of Environmental Health NI  
 Chief Environmental Health Officers' Group  
 Children in NI  
 Children's Law Centre  
 Civil Law Reform Division  
 Community Relations Council  
 Confederation of British Industry NI  
 District Councils  
 District Judge – Magistrates' Court  
 Education and Library Boards  
 Environment Committee of the NI Assembly  
 Environment and Planning Law Association of NI  
 Environmental Health Groups  
 Environmental Law Foundation  
 Equality Commission for NI  
 Equality Forum NI  
 Executive Council of the Inn of Court of NI  
 Federation of Small Businesses NI  
 Food Standards Agency NI  
 Friends of the Earth  
 General Consumer Council of NI  
 Health and Social Care Trusts  
 HM Council of County Court Judges  
 HM Revenue & Customs  
 Human Rights Commission  
 Include Youth  
 Institute of Directors  
 Law Centre NI  
 Law Society of NI  
 Local Government Staff Commission  
 Local Government Technical Advisors Group  
 MLAs  
 National Library of Ireland  
 National Trust  
 NIACRO  
 NIC/ICTU  
 NIPSA  
 North South Ministerial Council  
 North West Region Waste Management Group  
 NI Association of Citizens Advice Bureaux  
 NI Chamber of Commerce and Industry  
 NI Commissioner for Children and Young People  
 NI Council for Voluntary Action  
 NI Court Service  
 NI Electricity  
 NI Environment Link  
 NI Environmental Quality Forum  
 NI Fishery Harbour Authority  
 NI Housing Executive  
 NI Judicial Appointments Commission  
 NI Law Commission  
 NI Local Government Association  
 NI MEPs  
 NI MPs  
 NI Ombudsman  
 NI Political Parties  
 NI Tourist Board  
 Opportunity Youth  
 Participation and the Practice of Rights Project  
 Participation Network  
 Phoenix Natural Gas  
 Port of Belfast  
 Port of Larne  
 Port of Londonderry  
 Power NI  
 Pubs of Ulster  
 Queens University Belfast, School of Law  
 Society of Local Authority Chief Executives  
 SWaMP2008  
 Tidy Northern Ireland  
 Translink  
 University of Ulster, School of Law  
 Virgin Media  
 Warrenpoint Harbour Authority  
 Youth Council  
 Youthnet