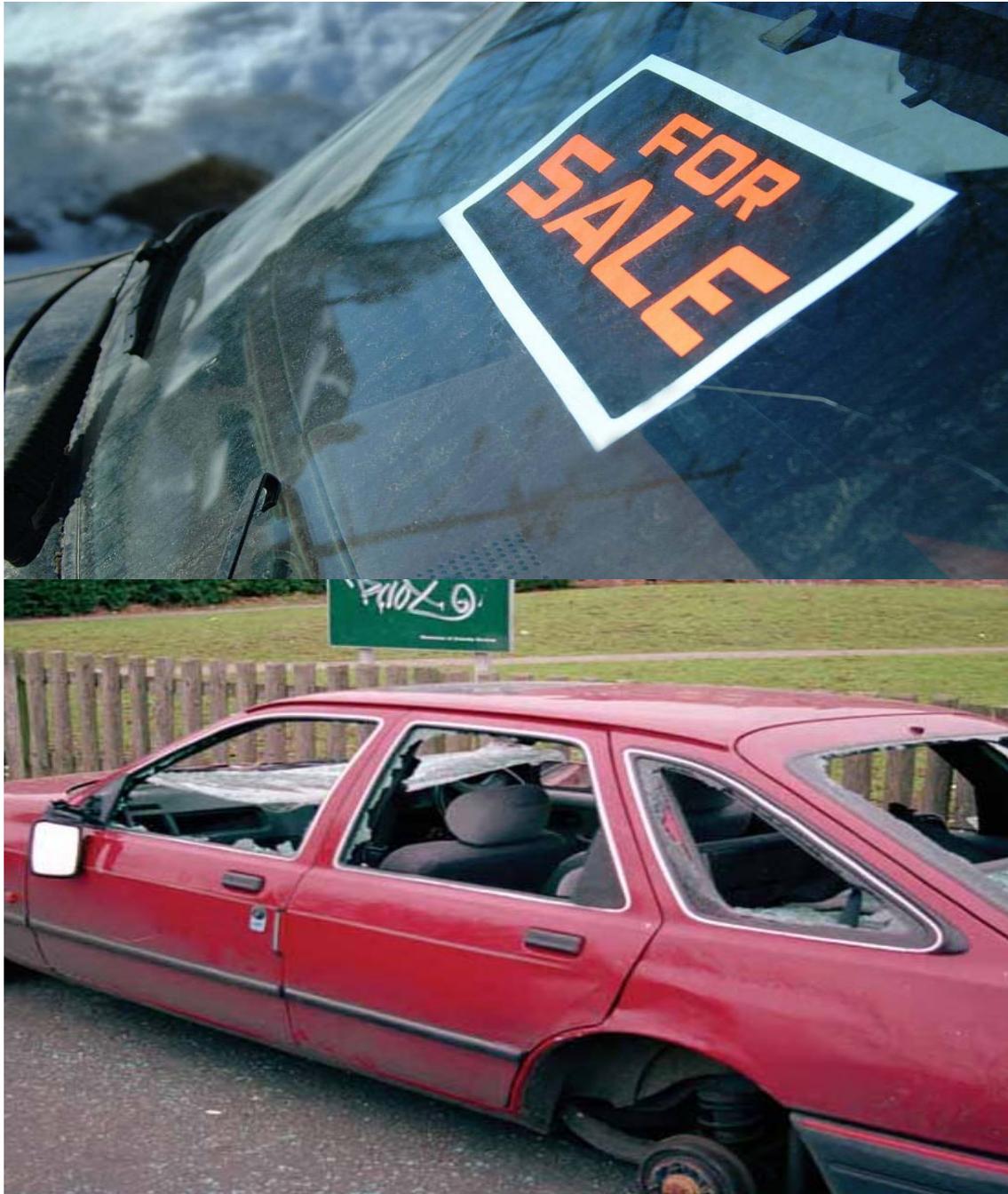




Department of the
Environment

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Guidance on Nuisance Parking and Abandoned Vehicles Legislation

OVERVIEW

This document provides guidance for district councils on the nuisance parking provisions in sections 2 to 6 of the Clean Neighbourhoods and Environment (Northern Ireland) Act 2011 (“the 2011 Act”) and on the provisions on abandoned vehicles in the Pollution Control and Local Government (Northern Ireland) Order 1978 (“the 1978 Order”) as amended by sections 7 to 10 of the 2011 Act.

PART A - NUISANCE PARKING

1. GENERAL PRINCIPLES

For the purpose of this guidance, the term ‘nuisance parking’ covers only those offences stipulated in sections 2 and 3 of the 2011 Act and is not intended to cover other parking infringements.

Some garages and businesses place cars for sale, for an extended period, on the road. This can cause a significant nuisance to local residents and takes up valuable car parking spaces. The same is true where sections of road are routinely used by mechanics, instead of business premises, to repair and maintain vehicles. This can look unsightly, can lead to damage of the local environment (for example, when oil is spilled or leaked) and may also present a danger to passers by.

The offence of exposing vehicles for sale on the road is intended to target those people who run a business selling motor vehicles and use the road as their “showroom”. Such behaviour is unfair to local residents who are thereby deprived of using the road to park their private vehicles and are otherwise disrupted as they go about their daily lives by resultant obstructions and business activity.

The offence is not intended to target individual private sellers of single vehicles, rather the nuisance that is caused by the presence of numbers of vehicles being offered for sale by the same person in the course of their business. This is why the offence requires that there are two or more vehicles being offered for sale for the purposes of a business.

It is recognised that a private individual may on occasion have more than one car to sell in a personal capacity and decide to offer them for sale by parking them close together on a road, but it is

expected that this will only happen on rare occasions and for limited periods. A person who can demonstrate that he is acting in such a capacity, and not for the purposes of a business, is not liable to conviction for the nuisance parking offence.

Creation of the offence of repairing a vehicle on the road is also aimed primarily at those who act irresponsibly in the course of a business using the road to all intents and purposes as a workshop. It is not intended to target private individuals who are carrying out minor work to their vehicles (unless the repairs cause unreasonable annoyance to persons in the vicinity), or those who carry out necessary work to vehicles by the side of the road in order to get them moving again after a breakdown or accident (such as breakdown organisations and mechanics providing a mobile service), provided the work is completed within 72 hours or within such other period as is authorised by the council.

2. DETAILED GUIDANCE

This part of the guidance gives a commentary on each relevant section and sub-section of the 2011 Act.

Section 2 – Exposing vehicles for sale on a road

Section 2(1) sets out the particulars of the offence, i.e. a person commits an offence if:

- (a) he leaves two or more motor vehicles parked within 500m of each other on a road or roads where they are exposed or advertised for sale, or
- (b) he causes two or more motor vehicles to be so left.

Section 2(2) sets out a defence - a person shall not be convicted of an offence under subsection (1) if he proves to the satisfaction of the court that he was not acting for the purposes of a business of selling motor vehicles.

Section 2(3) sets out the penalty - a person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 (currently £2,500) on the standard scale.

Section 2(4) sets out the definitions of 'motor vehicle' and 'road'. The definition of 'road' is as defined in Article 2 of the Road Traffic Regulation (Northern Ireland) Order 1997 ("the 1997 Order"). Road

“includes a public road and any street, carriageway, highway or roadway to which the public has access“.

A “public road” means a road which is maintainable by the Department for Regional Development, and includes any part of such a road and any bridge or tunnel over or through which such a road passes

This is a wide definition and by way of example it includes access roads through estates that are owned by the residents or by organisations such as housing associations. It covers both the carriageway and the footpath.

A car park would not normally come within the definition of a road.

The definition of ‘motor vehicle’ is the same as that used in Article 36 of the 1978 Order, i.e. “a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer “.

This definition covers cars, motorcycles the chassis of a car or motorcycle, trailers and caravans.

Section 3 – Repairing vehicles on a road

Section 3(1) sets out the offence: A person who carries out restricted works on a motor vehicle on a road is guilty of an offence.

Section 3(2) defines the term ‘restricted works’ as ”works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle” and ”works for the installation, replacement or renewal of any such part or accessory.”.

Section 3(3) sets out the circumstances in which a person is not to be convicted of an offence: A person is not to be convicted of an offence under section 3 in relation to any works if he proves to the satisfaction of the court that the works were not carried out –

- (a) in the course of, or for the purposes of, a business of carrying out restricted works; or

- (b) for gain or reward.

Section 3(4) sets out circumstances in which the defence set out in subsection (3) does not apply. The defence does not apply where the carrying out of the works gave reasonable cause for annoyance to persons in the vicinity. There is no legal definition of 'reasonable cause for annoyance' and interpretation of this provision will be for the courts. However, the concept of 'reasonableness' is one that will be familiar to district councils.

Section 3(5) sets out an additional defence, both elements of which must be demonstrated. A person is not to be convicted of an offence under this section in relation to any works if he proves to the satisfaction of the court that the works carried out were works of repair which:

- (a) arose from an accident or breakdown in circumstances where repairs on the spot or elsewhere on the road were necessary; and
- (b) were carried out within 72 hours of the accident or breakdown or were within that period authorised to be carried out at a later time by the district council.

Section 3(6) sets out the penalty. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 (currently £2,500) on the standard scale.

Section 3(7) sets out the definitions of 'motor vehicle' and 'road' used in section 3 which are the same definitions as used in section 2.

Sections 4 to 6 – Fixed Penalty Notices

These sections provide for fixed penalty notices to be issued when an authorised officer believes that an offence under section 2 or section 3 has been committed. The fixed penalty is set at £100, and an authorised officer must be an employee of a district council authorised in writing by that council to issue fixed penalty notices. Guidance on fixed penalty notices is available separately, and it is strongly recommended that this is consulted before fixed penalty notices are issued.

The Street Trading Act (Northern Ireland) 2001

An offence under section 2 or 3 of the 2011 Act is not intended to cover all situations and there is another piece of legislation that district councils can continue to use, where appropriate, to deal with someone who is selling or repairing vehicles on a road – The Street Trading Act (Northern Ireland) 2001.

By way of example section 17 of the Street Trading Act provides that anyone who engages in street trading without a licence, trades at a different location or on a day or at a time not specified in the licence or trades in a place or on a day not specified in a temporary licence shall be guilty of an offence which is punishable by a Level 3 fine (£1,000).

The nuisance parking provisions in the 2011 Act do not in any way detract from the powers available to district councils under the Street Trading Act. Instead, they give councils additional tools to deal with a particular type of nuisance parking, i.e. it is intended to specifically target businesses using the road as their “showroom”. In these circumstances, the 2011 Act gives councils the flexibility to deal with the offence by way of a fixed penalty and allows the councils to retain the receipts. There is also a stiffer penalty on summary conviction for the offence, i.e. Level 4 (£2,500) as opposed to Level 3 (£1,000) for an offence under the Street Trading Act.

PART B - ABANDONED VEHICLES

This part provides guidance on the following legislation:

- Pollution Control and Local Government (Northern Ireland) Order 1978 (Articles 29 – 33 and 36)¹ (as amended by sections 7–10 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011);
- The Removal and Disposal of Vehicles (Prescribed Periods) Regulations (Northern Ireland) 2012²

This is intended as a guide for district councils to use when exercising their powers relative to abandoned vehicles. It is however guidance and not legislation and so it is vital that those

¹ <http://www.legislation.gov.uk/nisi/1978/1049>

² <http://www.legislation.gov.uk/nisr/2012/52/contents/made>

relying upon it are fully conversant with the relevant legislation and explanatory notes.

This guidance is issued by the Department of the Environment and under section 31A of the 1978 Order³, district councils must have regard to it when exercising their functions under Articles 30 or 31 of the 1978 Order. For ease of reference the guidance is drafted under the following headings:

- A) The offence of abandonment
- B) The removal and custody of abandoned vehicles
- C) The disposal of abandoned vehicles
- D) Recovery of costs connected with removed vehicles
- E) Powers of entry

A) The Offence of Abandonment

Article 29 of the 1978 Order makes it a criminal offence to abandon a motor vehicle or anything that has formed part of a motor vehicle on any land in the open air or on any other land forming part of a road.

A person found guilty of such an offence may be punished on summary conviction with a fine not exceeding level 5 on the standard scale (currently £5,000), or, in the case of a second or subsequent conviction, to such a fine or to imprisonment for a term not exceeding three months or both.

Section 7 of the 2011 Act inserted a new section 29A into the 1978 Order, allowing an authorised officer of a district council to issue a fixed penalty notice as an alternative to prosecution for the offence. The fixed penalty is set at £200, and an authorised officer must be an employee of a district council authorised in writing by that council to issue fixed penalty notices. Guidance on fixed penalty notices is available separately, and it is strongly recommended that this is consulted before fixed penalty notices under these provisions are issued.

³ As inserted by section 10 of the Clean Neighbourhoods and Environment Act (NI) 2011

B) Removal and custody of abandoned vehicles

Article 30 of the 1978 Order and the Removal and Disposal of Vehicles (Prescribed Periods) Regulations (Northern Ireland) 2012 are the relevant legislative provisions.

The Duty to Remove an Abandoned Vehicle

Where it appears to a district council that a vehicle is abandoned in its council area, it will be the duty of the council to remove that vehicle. This duty extends to abandoned vehicles on land in the open air, or any land forming part of a road, in the council area. However, in respect of abandoned vehicles that are not on a road, this duty does not apply where the costs of removing the vehicle in question to the nearest convenient carriageway is unreasonably high.

Definition of ‘abandoned’

There is no legal definition of ‘abandoned’ and this guidance does not seek to create one. District council officers must use their discretion when making decisions on this point.

However, the following characteristics are generally common to abandoned vehicles and one or more of the following considerations may assist a council officer in making a decision on the point:

- (a) untaxed;
- (b) no current vehicle keeper on the Driver and Vehicle Agency’s (DVA) record;
- (c) stationary for a significant amount of time;
- (d) significantly damaged or vandalised, run down or unroadworthy;
- (e) burnt out;
- (f) lacking one or more of its number plates;
- (g) containing waste

Category (d) may include vehicles with flat tyres, wheels removed or broken windows.

Councils may also wish to take photographs to record the condition of the vehicle in order to minimise the possibility of any challenges regarding its state at a later stage

The above list is not exhaustive and a vehicle may be considered to have been abandoned in circumstances where none or few of the listed considerations apply. A vehicle should not be considered abandoned solely on the grounds that it is not displaying a valid tax disc. District councils should check details of the vehicle's keeper and the vehicle taxation status with DVA prior to taking action.

The exception to the duty

A district council shall not be required to remove an abandoned vehicle if the cost of removal to the nearest 'carriageway'⁴ would be unreasonably high.

It is for the council to decide, on a case by case basis, whether the costs of removing a vehicle to the nearest carriageway (not to its final destination) are unreasonably high. In such cases, the duty to remove the vehicle ceases to apply and the council is not required to take any further action. However, such circumstances should rarely occur and should typically occur only when a vehicle has been abandoned on remote or hard to access areas, or where special and/or additional machinery is needed to aid removal.

District councils have no power to charge occupiers of the land on which the vehicle is abandoned (unless the occupier is the responsible person as defined in Article 32(3) of the 1978 Order) for the costs they incur in exercising their duty, and charges should not therefore be levied against such occupiers for the removal of abandoned vehicles.

District councils may, of course, remove abandoned vehicles at the request of a third party in circumstances where the duty to remove does not apply; in such cases they are free to make arrangements with that third party to recover their costs.

⁴ 'carriageway' means a way constituting or forming part of a road, being a way over which the public have a right of way for the passage of motor vehicles .

Notice requirements

Where a vehicle, which is deemed to be abandoned is on land that is occupied, the district council must give the occupier 7 days notice of their proposal to remove the vehicle. The council is not entitled to remove the vehicle if the occupier objects to the proposal within that period. However, if the occupier gives the council permission to remove the vehicle (e.g. if the vehicle was abandoned without their consent), the 7 day notice automatically lapses and the vehicle can be removed immediately.

The legislation does not define the term 'occupier'. The general rule is that if a term is not defined in the statute in which it is used, it is given its natural meaning. This will ultimately be for the council officer to decide. However the term 'occupier' has been previously defined as:

- (a) the tenant or licensee;
- (b) anyone who has legal possession of and control over the premises.

Under a change introduced by the 2011 Act⁵, a 7 day notice is not required where a vehicle is abandoned on a road (within the meaning of Article 29 of the 1978 Order), i.e. "road" includes any street, carriageway, highway or roadway to which the public has access.

The 2011 Act has removed the requirement to affix a notice to a vehicle that is deemed fit for destruction. All such abandoned vehicles can now be removed immediately.

Custody procedures

District councils can remove vehicles by towing, driving or by any other means necessary. An authorised officer can also take any measures he may consider necessary to enable him to remove or move it. Under Article 74(2) of the 1978 Order, a council is not required to make good or pay compensation for any damage to a vehicle caused by an authorised officer in exercising his duty to remove it. However, while an abandoned vehicle is in the custody of a district council, the council must take all steps that are reasonably necessary for the safe custody of that vehicle.

⁵ Section 8 of the 2011 Act amends Article 30(2) of the 1978 Order

C) Disposal of abandoned vehicles

The relevant provisions are Article 31 of the Pollution Control and Local Government (NI) Order 1978 (“the 1978 Order”) and the Removal and Disposal of Vehicles (Prescribed Periods) Regulations (NI) 2012.

For certain types of abandoned vehicles, district councils will be bound to take steps to trace the owner of a vehicle and, if successful, give them 7 days written notice that the council intends to dispose of the vehicle if it is not collected within that time. If the owner is traced, the council has the option of serving a fixed penalty notice as an alternative to prosecution for the offence of abandoning the vehicle.

District councils have the power to dispose of abandoned vehicles that they have removed and are in their custody. The council may dispose of an abandoned vehicle in ‘such a manner as they think fit’.

End of life vehicles should only be destroyed at one of the network of Authorised Treatment Facilities. Disposal can only take place in accordance with the following timescales:

- (a) in the case of a vehicle which in the opinion of the council is in such a condition that it ought to be destroyed, at any time after its removal;
- (b) in the case of a vehicle, not falling within paragraph (a), which –
 - i) does not display a licence (i.e. tax disc) (whether current or otherwise and whether or not the vehicle is required to display a licence); and
 - ii) does not display any registration mark (i.e. number plate) (whether indicating registration within or outside the United Kingdom),at any time after its removal.

In circumstances where an abandoned vehicle is sold by a council the owner can reclaim the proceeds of sale minus any removal, storage and disposal costs that may have accrued for up to a year after the disposal.

Note: The 2011 Act has amended legislation relating to disposal of vehicles that do not display a current licence or registration mark,

enabling them to be destroyed immediately after removal. A vehicle must satisfy both criteria in paragraph (b) in order to be disposed of immediately. There is no obligation to trace or inform the owner when a vehicle can be disposed of immediately under paragraphs (a) or (b).

- (c) in any other case, at any time after the council has taken reasonable steps to find a person appearing to it to be the owner of the vehicle and either:–
 - i) the council has failed to find such a person; or
 - ii) he has failed to comply with a notice served on him by the council requiring him to remove the vehicle within 7 days from the custody of the council.

Steps to be taken to find the owners of vehicles

If the vehicle carries a NI registration mark (number plate) the district council should find the owner and send a written notice to them (having acquired the details from DVA) declaring that their vehicle has been removed and is being held in the council's custody and that should they wish to reclaim it, they should do so within 7 days of the notice being served otherwise the vehicle will be disposed of.

Article 31(1)(c) of the 1978 Order requires councils to take reasonable steps to find the owner of the vehicle prior to disposing of it. Examples of reasonable steps could include tracing the owner through the DVA database, making enquiries with local residents or owners of land where a vehicle has been abandoned.

The owner of a vehicle in custody can remove the vehicle after satisfying the district council that he is the owner and paying any expenses that the district council may have reasonably incurred. In circumstances where an abandoned vehicle is sold by a council the owner can reclaim the proceeds of sale minus any removal, storage and disposal costs that may have accrued for up to a year after the disposal.

If more than one owner claims a vehicle that is in custody, or the proceeds of the sale of that vehicle, the district council shall choose the one they 'think fit' and treat him as the owner for the purposes of enabling him to remove the vehicle from custody or to reclaim the costs of a sale.

Following the disposal of a vehicle, councils should notify the PSNI and Driver and Vehicle Agency (DVA) in all cases, even if the vehicle did not bear a NI registration mark. This will allow the PSNI and DVA to instigate any necessary follow up action with their counterparts in other jurisdictions.

D) Recovery of costs connected with removed vehicles

Under Article 32 of the 1978 Order, before surrendering a vehicle to the owner, the district council is entitled to recover from the owner or the person who abandoned the vehicle, any expenses that the council has reasonably incurred:–

- (a) in respect of the removal of the vehicle; and
- (b) in respect of any period during which the vehicle is in its custody; and
- (c) where the vehicle is disposed of, in respect of its disposal.

Any sum recoverable by virtue of Article 32 shall be a civil debt recoverable summarily.

If a person is convicted of an offence under Article 29(1) of the 1978 Order, the court may order him to pay any sum to the district council for the removal, storage and disposal of the vehicle to which it is entitled.

E) Powers of Entry

Under Article 74 of the 1978 Order and section 98 of the Local Government Act (Northern Ireland) 1972⁶, any person authorised in writing by a district council may at any reasonable time enter any land for the purposes of investigating the need to carry out their removal of abandoned vehicle functions.

⁶ <http://www.legislation.gov.uk/apni/1972/9/section/98>