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WELSH STATUTORY INSTRUMENTS

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**2007 No. 117 (W.8)**

**ENVIRONMENTAL PROTECTION, WALES**

**The Statutory Nuisances (Miscellaneous Provisions) (Wales) Regulations 2007**

*Made* - - - - 23 January 2007

*Coming into force* - - 31 January 2007

The National Assembly for Wales being the appropriate person for the purposes of section 79(7C) (d) of the Environmental Protection Act 1990 (“the 1990 Act”)(1), makes the following Regulations in exercise of those powers and in exercise of the powers conferred upon the Secretary of State and which are now exercisable by the National Assembly for Wales, under paragraph 1(4) of Schedule 3 to that Act(2):

**Title, commencement and application**

1.—(1) The title of these Regulations is the Statutory Nuisances (Miscellaneous Provisions) (Wales) Regulations 2007.

(2) These Regulations come into force on 31 January 2007.

(3) These Regulations apply in relation to Wales.

**“Relevant industrial etc. premises”: further exclusions**

2. For the purposes of paragraph (d) of section 79(7C) of the 1990 Act, there is prescribed land of a description mentioned in the first column of the Table in the Schedule to these Regulations.

**Amendment of the Statutory Nuisance (Appeals) Regulations 1995**

3.—(1) Regulation 2 (appeals under section 80(3) of the 1990 Act) of the Statutory Nuisance (Appeals) Regulations 1995(3) is amended as follows.

(2) In paragraph (2)(e)—

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(1) 1990 c. 43; the definition of “appropriate person” in section 79(7) was inserted by section 101(4) of the Clean Neighbourhoods and Environment Act 2005 (c. 16), and section 79(7C) was inserted by section 101(5) of that Act.  
(2) The relevant functions of the Secretary of State in relation to Wales were transferred to the National Assembly for Wales by article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).  
(3) S.I. 1995/2644; the Regulations extend to England and Wales, and were made by the Secretary of State for the Environment as respects England, and the Secretary of State for Wales as respects Wales.

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- (a) in paragraph (i), after “(f)” insert “, (fa)”<sup>(4)</sup>;
- (b) after paragraph (iii) insert—

“or

(iv) is a nuisance falling within section 79(1)(fb) of the 1990 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 80(8A) of the 1990 Act),”<sup>(5)</sup>.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(6)</sup>

23 January 2007

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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<sup>(4)</sup> Section 79(1)(fa) of the 1990 Act was inserted by section 101(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

<sup>(5)</sup> Section 79(1)(fb) of the 1990 Act was inserted by section 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16). Section 80(80A) was inserted by section 102(3) of the Clean Neighbourhoods and Environment Act 2005.

<sup>(6)</sup> 1998 c. 38.

## SCHEDULE

Regulation 2

<i>Description of Land</i>	<i>Legislation</i>
Land for the time being designated as an Environmentally Sensitive Area under section 18(1) of the Agriculture Act 1986 (c. 49)	
Land in respect of which any payment is made in accordance with the provisions of a Statutory Instrument cited opposite	<p>The Habitat (Broadleaved Woodland) (Wales) Regulations 1994 (S.I. 1994/3099)</p> <p>The Habitat (Water Fringe) (Wales) Regulations 1994 (S.I. 1994/3100)</p> <p>The Habitat (Coastal Belt) (Wales) Regulations 1994 (S.I. 1994/3101)</p> <p>The Habitat (Species-Rich Grassland) Regulations 1994 (S.I. 1994/3102)</p> <p>The Conservation (Natural Habitats &amp;c. (Regulations 1994 (S.I. 1994/2716)</p> <p>The Farm Waste Grant (Nitrate Vulnerable Zones) (Wales) Scheme 1996 (S.I. 1996/908)</p> <p>The Farm Waste Grant (Nitrate Vulnerable Zones) (England and Wales) Scheme 2001 (S.I. 2001/3709)</p> <p>The Farm Waste Grant Scheme (Nitrate Vulnerable Zones) (Wales) Scheme 2004 (S.I. 2004/1606)</p> <p>The Moorland (Livestock Extensification) (Wales) Regulations 1995 (S.I. 1995/1159)</p> <p>The Organic Farming (Aid) Regulations 1994 (S.I. 1994/1721)</p> <p>The Organic Farming Scheme (Wales) Regulations 2001 (S.I. 2001/424)</p> <p>The Tir Cynnal (Wales) Regulations 2006 (S.I. 2006/41)</p> <p>The Land In Care (Tir Gofal) (Wales) Regulations 1999 (S.I. 1999 1176)</p>

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 101 of the Clean Neighbourhoods and Environment Act 2005 (c. 16) (“the 2005 Act”) adds a new category of statutory nuisance to section 79(1) of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) comprising “any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance”.

Section 79(7C)(a) to (c) and (e) of the 1990 Act excludes certain types of land from the definition of “relevant industrial, trade or business premises” with the effect that any insects emanating from such premises which are prejudicial to health or a nuisance, will not constitute a statutory nuisance for the purposes of the statutory nuisance regime in Part 3 of the 1990 Act.

Under section 79(7C)(d) of the 1990 Act, the National Assembly for Wales may prescribe other land which forms part of an agricultural unit (but which is not already excluded under section 79(7C)(a) to (c)) to be excluded from the definition of “relevant industrial, trade or business premises”.

These Regulations prescribe, for the purposes of section 79(7C)(d) of the 1990 Act, land in respect of which payments are made under any of the land management schemes described in the Schedule to the Regulations so that insects emanating from such land which are prejudicial to health or a nuisance will not constitute a statutory nuisance for the purposes of Part 3 of the 1990 Act (*regulation 2 and the Schedule*).

These Regulations also amend the Statutory Nuisance (Appeals) Regulations 1995 (S.I. 1995/2644) (“the 1995 Regulations”).

The 1995 Regulations (regulation 2(2)) describe the grounds on which a person may rely when appealing to the magistrates' court under section 80(3) of the 1990 Act against an abatement notice served on that person in respect of a statutory nuisance. In respect of any of the statutory nuisances set out in section 79(1)(a), (d), (e), (f) or (g) of the 1990 Act, where such a nuisance arose on industrial, trade or business premises, the grounds are that the best practicable means were used to prevent, or to counteract the effects of the nuisance (see regulation 2(2)(e)(i) of the 1995 Regulations).

The 2005 Act (sections 101 to 103) adds two new statutory nuisances to those listed in section 79(1) of the 1990 Act. These are (at section 79(1)(fa)) the insect nuisance in respect of which provision is made in regulation 2 of these Regulations (the insect nuisance) and (at section 79(1)(fb)) artificial light emitted from premises so as to be prejudicial to health or a nuisance (the artificial lights nuisance).

The amendments made by these Regulations enable reliance to be placed, upon appeal to the magistrates' court against an abatement notice which cites either an insect or artificial light statutory nuisance, on best practicable means having been used to abate, or to counteract the effects of, such nuisance. Section 79(1)(fa) (the insect nuisance) is added to the list of provisions at regulation 2(2)(e)(i) of the 1995 Regulations. Section 79(1)(fb) (the artificial light nuisance) is made the subject of a new regulation 2(2)(e)(iv) of the 1995 Regulations, providing that best practicable means is a ground of appeal against an abatement notice in respect of this nuisance where the artificial light is emitted either from industrial, trade or business premises, or by lights used for the purpose of illuminating an outdoor relevant sports facility (*regulation 3*).