



Control of Pollution Act 1974

1974 CHAPTER 40

PART III

NOISE

Supplemental

69 Execution of works by local authority

- (1) This section applies—
- (a) to a notice under section 58 of this Act;
 - (b) to a noise reduction notice ; and
 - (c) to an order of a magistrates' court under section 59(2) or section 65(6) of this Act,

being a notice or order which requires any person to execute any works.

- (2) If that person fails to execute all or any of the works in accordance with the notice or order, the local authority may execute those works.

- (3) Where a local authority execute works in pursuance of—

- (a) section 59(6) or section 65(7) of this Act; or
- (b) this section,

the local authority may recover from the person in default the expenditure incurred by the local authority in executing the works, except such of the expenditure as that person shows was unnecessary in the circumstances.

In this and the following subsection " the person in default" means—

- (i) in a case under section 59(6), the person against whom the order was made under subsection (2) of that section,
- (ii) in a case under section 65(7), the person convicted of an offence under subsection (5) of that section, and
- (iii) in any other case, the person to whom the notice or order applies.

- (4) In proceedings to recover any amount due to a local authority under the preceding subsection in respect of works executed by the local authority in pursuance of this section, it shall not be open to the person in default to raise any question which he could have raised on an appeal against the notice or order.

70 Appeals to Secretary of State and magistrates' court

- (1) Where any provision in this Part of this Act provides for an appeal to a magistrates' court, the procedure shall be by way of complaint for an order and the Magistrates' Courts Act 1952 shall apply to the proceedings.
- (2) The Secretary of State may make regulations as to appeals under this Part of this Act to the Secretary of State or, subject to the preceding subsection, to magistrates' courts; and the regulations may in particular—
- (a) include provisions comparable to those in section 290 of the Public Health Act 1936 (appeals against notices requiring the execution of works);
 - (b) prescribe the cases in which a notice under this Part of this Act is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
 - (c) prescribe the cases in which the decision on appeal may in some respects be less favourable to the appellant than the decision from which he is appealing;
 - (d) prescribe the cases in which the appellant may claim that a notice should have been served on some other person and prescribe the procedure to be followed in those cases.
- (3) Regulations under this section may prescribe the procedure and practice as respect appeals to the Secretary of State under this Part of this Act, and in particular may make provision as respects—
- (a) the particulars to be included in the notice of appeal;
 - (b) the persons on whom notice of appeal is to be served and the particulars, if any, to accompany the notice; and
 - (c) the abandonment of an appeal.
- (4) In entertaining any appeal under this Part of this Act the Secretary of State, or as the case may be the magistrates' court, shall have regard to any duty imposed by law on the appellant which concerns the activities in the course of which the noise is emitted.
- (5) In the application of this section to Scotland, subsection (1) and the reference to that subsection in subsection (2) shall not have effect.

71 Codes of practice for minimising noise

- (1) For the purpose of giving guidance on appropriate methods (including the use of specified types of plant or machinery) for minimising noise, the Secretary of State may—
- (a) prepare and approve and issue such codes of practice as in his opinion are suitable for the purpose; and
 - (b) approve such codes of practice issued or proposed to be issued otherwise than by the Secretary of State as in the opinion of the Secretary of State are suitable for the purpose.

- (2) The Secretary of State shall under paragraph (a) or paragraph (b) of the preceding subsection approve a code of practice for the carrying out of works to which section 60 of this Act applies.
- (3) The powers conferred by this section on the Secretary of State shall be exercisable by order, and shall include power to vary or revoke a previous order under this section.

72 " Best practicable means "

- (1) This section shall apply for the construction of references in this Part of this Act to best practicable means.
- (2) In that expression " practicable " means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications.
- (3) The means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and acoustic structures.
- (4) The test of best practicable means is to apply only so far as compatible with any duty imposed by law, and in particular is to apply to statutory undertakers only so far as compatible with the duties imposed on them in their capacity of statutory undertakers.
- (5) The said test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances.
- (6) Subject to the preceding provisions of this section, regard shall be had, in construing references to " best practicable means ", to any relevant provision of a code of practice approved under the preceding section.

73 Interpretation and other supplementary provisions

- (1) Except where the context otherwise requires, in this Part of this Act—
 - " contravention " includes a failure to comply with the provision in question, and " contravene " shall be construed accordingly;
 - " local authority " means—
 - (a) in England and Wales, the council of a district or a London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple; and
 - (b) in Scotland, an islands or district council;
 - " noise " includes vibration ;
 - " noise abatement order " and " noise abatement zone " have the meanings given by section 63 of this Act;
 - " noise level register " has the meaning given by section 64(2) of this Act;
 - " noise reduction notice " has the meaning given by section 66(3) of this Act;
 - " person responsible ", in relation to the emission of noise, means the person to whose act, default or sufferance the noise is attributable ;
 - " statutory undertakers " means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any

Status: This is the original version (as it was originally enacted).

undertaking for the supply of electricity, gas, hydraulic power or water, and includes the Post Office;

" work of engineering construction " means the construction, structural alteration, maintenance or repair of any railway line or siding or any dock, harbour, inland navigation, tunnel, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer, sewage works or gasholder.

- (2) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part of this Act, except sections 62 to 67, the territorial sea lying seawards from that part of the shore; and—
- (a) any question as to whether a place is within the area of a local authority by virtue of this subsection shall be determined by the Secretary of State; and
 - (b) this Part of this Act (except sections 62 to 67 and this subsection) shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—
 - (i) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel, and
 - (ii) with such other modifications, if any, as are prescribed.
- (3) Where more than one person is responsible for noise, this Part of this Act shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance, or would result in a level of noise justifying action under this Part of this Act.
- (4) This Part of this Act does not apply to noise caused by aircraft other than model aircraft and does not confer functions on port health authorities.

74 Penalties

- (1) A person guilty of an offence against this Part of this Act shall be liable on summary conviction—
- (a) in the case of a first offence against this Part of this Act, to a fine not exceeding £200; and
 - (b) in the case of a second or subsequent offence against this Part of this Act, to a fine not exceeding £400,
- together, in any case, with a further fine not exceeding £50 for each day on which the offence continues after the conviction.
- (2) In determining whether an offence is a second or subsequent offence against this Part of this Act, account shall be taken of any offence—
- (a) under section 24 of the Public Health (Scotland) Act 1897 by way of contravening a decree or interdict relating to noise; or
 - (b) under section 95 of the Public Health Act 1936 by way of contravening a nuisance order relating to noise,
- as if it were an offence against this Part of this Act.