



Public Health Act 1936

1936 CHAPTER 49

PART III

NUISANCES AND OFFENSIVE TRADES.

General duty of local authority.

91 Duty of local authority to inspect district for detection of nuisances.

It shall be the duty of every local authority to cause their district to be inspected from time to time for the detection of matters requiring to be dealt with under the provisions of this Part of this Act as being statutory nuisances within the meaning of the next succeeding section.

Nuisances which may be dealt with summarily.

92 Statutory nuisances.

- (1) Without prejudice to the exercise by a local authority of any other powers vested in them by or under this Act, the following matters may, subject to the provisions of this Part of this Act, be dealt with summarily, and are in this Part of this Act referred to as "statutory nuisances," that is to say:—
- (a) any premises in such a state as to be prejudicial to health or a nuisance;
 - (b) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - (c) any accumulation or deposit which is prejudicial to health or a nuisance;
 - (d) any dust or effluvia caused by any trade, business, manufacture or process and being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood;
 - (e) any factory (not being a factory to which section one of the Factory and Workshop Act, 1901, applies) workshop, or workplace, which is not provided with sufficient means of ventilation, or in which sufficient ventilation is not

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maintained, or which is not kept clean or not kept free from noxious effluvia, or which is so overcrowded while work is carried on as to be prejudicial to the health of those employed therein;

- (f) any other matter declared by any provision of this Act to be a statutory nuisance.
- (2) A local authority shall not without the consent of the Minister institute summary proceedings under this Part of this Act in respect of any such nuisance as is mentioned in paragraph (c) or paragraph (d) of the preceding subsection if proceedings in respect thereof might be instituted under the Alkali, &c. Works Regulation Act, 1906.
- (3) So much of paragraph (e) of subsection (1) of this section as relates to the provision of means of ventilation and the maintenance of ventilation shall not apply to a shop to which the Shops Act, 1934, applies.
- (4) In determining for the purposes of the said paragraph (e) whether any factory or workshop is provided with sufficient means of ventilation or whether sufficient ventilation is maintained therein, or whether any factory or workshop is so overcrowded as to be prejudicial to health, regard shall be had to the requirements of the Factory and Workshop Act, 1901, and of any order made by the Secretary of State thereunder, with respect to ventilation or overcrowding in factories and workshops.

93 Service of abatement notice.

Where a local authority are satisfied of the existence of a statutory nuisance, they shall serve a notice (hereafter in this Act referred to as " an abatement notice ") on the person by whose act, default or sufferance the nuisance arises or continues, or, if that person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the nuisance and to execute such works and take such steps as may be necessary for that purpose :

Provided that—

- (a) where the nuisance arises from any defect of a structural character, the notice shall be served on the owner of the premises;
- (b) where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or the occupier of the premises, the local authority may themselves do forthwith what they consider necessary to abate the nuisance and to prevent a recurrence thereof.

94 Power of court to make nuisance order if abatement notice disregarded.

- (1) If the person on whom an abatement notice has been served makes default in complying with any of the requirements of the notice, or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises, the authority shall cause a complaint to be made to a justice of the peace, and the justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.
- (2) If on the hearing of the complaint it is proved that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, then, subject to the provisions of subsections (4) and (5) of this section the court shall make an order (hereafter in this Act referred to as "a nuisance order ") for either, or both, of the following purposes—

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- (a) requiring the defendant to comply with all or any of the requirements of the abatement notice, or otherwise to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
- (b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent a recurrence;

and may also impose on the defendant a fine not exceeding five pounds.

Where a nuisance proved to exist is such as to render a building, in the opinion of the court, unfit for human habitation, the nuisance order may prohibit the use of the building for that purpose until a court of summary jurisdiction, being satisfied that it has been rendered fit for human habitation, withdraws the prohibition.

- (3) Where on the hearing of a complaint under this section it is proved that the alleged nuisance existed at the date of the service of the abatement notice and that at the date of the making of the complaint it either still existed or was likely to recur, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant to pay to the local authority such reasonable sum as the court may determine in respect of the expenses incurred by the authority in, or in connection with, the making of the complaint and the proceedings before the court.
- (4) Where proceedings are brought under this section in respect of a nuisance under paragraph (c) of subsection (1) of section ninety-two of this Act (which relates to certain accumulations or deposits) it shall be a defence for the defendant to prove that the accumulation or deposit complained of was necessary for the effectual carrying on of a business or manufacture and has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best practicable means have been taken for preventing it from being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood.
- (5) Where proceedings are brought under this section in respect of a nuisance under paragraph (d) of subsection (1) of section ninety-two of this Act (which relates to dust or effluvia caused by any trade, business, manufacture or process), it shall be a defence for the defendant to prove that the best practicable means have been taken for preventing, or counteracting the effect of, the dust or effluvia.
- (6) If it appears to the court that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, cannot be found, the nuisance order may be addressed to, and executed by, the local authority.

95 Penalty for contravention of nuisance order, and abatement of nuisance by local authority.

- (1) Any person who fails without reasonable excuse to comply with, or knowingly contravenes, a nuisance order shall be liable to a fine not exceeding five pounds and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor.
- (2) Without prejudice to the foregoing provisions of this section, where a nuisance order has not been complied with, the local authority may abate the nuisance, and do whatever may be necessary in execution of the order.

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96 Costs of local authority in abating, or preventing recurrence of, nuisance.

- (1) Any expenses reasonably incurred by a local authority under this Part of this Act in abating, or preventing the recurrence of, a statutory nuisance in respect of which a nuisance order has been made may be recovered by them—
 - (a) where the order was made on some person other than the local authority, from that person ;
 - (b) where the order was made on the local authority, from the person by whose act or default the nuisance was caused,and, in either case, if the person in question is the owner of the premises, from any person who is for the time being the owner thereof.
- (2) In proceedings to recover any such expenses as aforesaid, the court shall have power to apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court may deem fair and reasonable.

97 Proceedings where nuisance caused by acts or default of more than one person.

- (1) Where a statutory nuisance appears to be wholly or partly caused by the acts or defaults of two or more persons, proceedings may be instituted under the foregoing provisions of this Part of this Act against any one of them, or all or any two or more of them may be included in the same proceedings; and, subject to those provisions, any one or more of the persons proceeded against may be ordered to abate the nuisance, so far as it appears to the court to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of the court, contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of those persons would not separately have caused a nuisance, and the costs may be apportioned as the court may deem fair and reasonable.
- (2) Proceedings against several persons included in one complaint shall not abate by reason of the death of any of the persons so included, but may be carried on as if the deceased person had not been so included.
- (3) Where some only of the persons by whose acts or defaults a nuisance has been caused have been proceeded against under this Act, they may, without prejudice to any other remedy, recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of, and incidental to, the proceedings and the abatement of the nuisance, and of any fine or costs ordered to be paid in the proceedings.

98 Power to proceed where cause of nuisance arises outside district.

- (1) Where a nuisance within, or affecting any part of, the district of a local authority appears to be wholly or partly caused by some act or default committed or taking place outside their district, the authority may take, or cause to be taken, against any person in respect of that act or default any proceedings in relation to nuisances by this Act authorised in the like cases, and with the like incidents and consequences, as if the act or default were committed or took place wholly within their district, so however that summary proceedings shall only be taken before a court having jurisdiction in the place where the act or default is alleged to be committed or to take place.
- (2) This section shall extend to London so far as to authorise proceedings to be taken under it in respect of any nuisance within, or affecting any part of, the district of a

local authority, where that nuisance is wholly or partly caused by some act or default committed or taking place in London.

99 Power of individual to make complaint as to statutory nuisance.

Complaint of the existence of a statutory nuisance under this Act may be made to a justice of the peace by any person aggrieved by the nuisance, and thereupon the like proceedings shall be had, with the like incidents and consequences as to the making of orders, penalties for disobedience of orders and otherwise, as in the case of a complaint by the local authority, but any order made in such proceedings may, if the court after giving the local authority an opportunity of being heard thinks fit, direct the authority to abate the nuisance.

100 Local authority may take proceedings in High Court for abatement of statutory nuisance.

If in the case of any statutory nuisance the local authority are of opinion that summary proceedings would afford an inadequate remedy, they may in their own name take proceedings in the High Court for the purpose of securing the abatement or prohibition of that nuisance, and such proceedings shall be maintainable notwithstanding that the authority have suffered no damage from the nuisance.

Smoke nuisances.

101 Smoke nuisances.

For the purposes of this Part of this Act—

- (a) any installation for the combustion of fuel which is used in any manufacturing or trade process, or for working engines by steam, and which does not so far as practicable prevent the emission of smoke to the atmosphere and
- (b) any chimney (not being the chimney of a private house) emitting smoke in such quantity as to be a nuisance,

shall be statutory nuisances and are in this Act referred to as " smoke nuisances."

102 Notice to occupier of existence of smoke nuisance.

Where in the opinion of an authorised officer of a local authority a smoke nuisance exists, he shall, as soon as practicable after he has become aware thereof, notify the occupier of the premises on which the nuisance exists, and if that notification was not in writing, shall, within twenty-four hours after he became aware of the nuisance, confirm the notification in writing.

103 Procedure with respect to smoke nuisances.

- (1) Subject to the provisions of this section, where a smoke nuisance exists on any premises, an abatement notice may be served and a complaint with respect to the nuisance may be made in like manner, and thereupon the like proceedings shall be had, with the like incidents and consequences as to the making of orders, penalties for disobedience of orders and otherwise, as in the case of any other statutory nuisance.

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- (2) Where proceedings are brought by virtue of this section in respect of such a nuisance as is mentioned in paragraph (a) of the last but one preceding section, it shall be a defence for the defendant to prove that the installation complained of embodies the best practicable means for preventing the emission of smoke to the atmosphere, and that the installation has been carefully attended to by the person having the charge thereof.
- (3) Where proceedings are brought by virtue of this section in respect of the emission from a chimney of smoke, other than black smoke, in such quantity as to be a nuisance, it shall be a defence for the defendant to prove that the best practicable means have been taken for preventing the nuisance.

For the purposes of this subsection, the expression " best practicable means " has reference not only to the provision and efficient maintenance of adequate and proper plant for preventing the creation and emission of smoke, but also to the manner in which that plant is used.

- (4) Where byelaws made under the next succeeding section are in force for regulating the emission of smoke of such colour, density or content as may be prescribed by the byelaws, the emission of smoke of the character so prescribed for such period as may be so prescribed either from buildings generally to which the enactments relating to smoke nuisances apply, or from such classes of those buildings as may be so prescribed, shall, until the contrary is proved, be deemed to be a statutory nuisance and a smoke nuisance.
- (5) In the case of a smoke nuisance, the fine which may be imposed by the court in respect of a failure to comply with an abatement notice shall be a fine not exceeding fifty pounds, and the fines which may be imposed by a court in respect of a failure to comply with, or a contravention of, a nuisance order shall be a fine not exceeding ten pounds and a further fine not exceeding five pounds for each day on which the offence continues after conviction therefor.

104 Byelaws as to smoke.

- (1) A local authority may, and if so required by the Minister shall, make byelaws regulating the emission of smoke of such colour, density, or content as may be prescribed by the byelaws.
- (2) Building byelaws may require the provision in new buildings, other than private houses, of such arrangements for heating or cooking as are calculated to prevent or reduce the emission of smoke.
- (3) A local authority who propose to apply to the Minister for confirmation of any byelaws made under this section shall, in addition to complying with the requirements of section two hundred and fifty of the Local Government Act, 1933, publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation.

105 Power of local authority to investigate problems relating to atmospheric pollution.

Subject to such restrictions or conditions, if any, as the Minister may by regulations prescribe, a local authority may undertake investigations and research into problems relating to atmospheric pollution and the abatement of smoke nuisances, and may

contribute towards the cost of similar investigations and research undertaken by other bodies or persons.

106 Application to Crown of provisions as to smoke nuisances.

If it appears to a local authority that a smoke nuisance within, or affecting any part of, their district exists on any premises occupied for the public service of the Crown, they shall report the circumstances to the appropriate Government department, and, if the Minister responsible for that department is satisfied after due inquiry that such a nuisance exists, he shall cause such steps to be taken as may be necessary to abate the nuisance and to prevent a recurrence thereof.

Offensive trades.

107 Restriction on establishment of offensive trade in urban district.

- (1) Any person who on any premises within a borough or urban district, or a rural district or contributory place in which section one hundred and twelve of the Public Health Act, 1875, was in force immediately before the commencement of this Act, establishes, without the consent of the local authority, any offensive trade as hereinafter defined shall be liable to a fine not exceeding fifty pounds.

For the purposes of this section, the expression " offensive trade " means any of the following trades, businesses or manufactures, that is to say—

- (i) the trade or business of a blood boiler, blood drier, . bone boiler, fat extractor, fat melter, fell-monger, glue maker, gut scraper, rag and bone dealer, size maker, soap boiler, tallow melter or tripe boiler; or
- (ii) any other trade, business or manufacture—
 - (a) which, by virtue of an order made and confirmed under section fifty-one of the Public Health Acts Amendment Act, 1907, was immediately before the commencement of this Act an offensive trade in the said borough, district or contributory place; or
 - (b) which the local authority by order confirmed by the Minister, and published in such manner as he may direct, have after the commencement of this Act declared to be an offensive trade in the said borough, district or contributory place :

Provided that any order in force immediately before the date of commencement of this Act declaring the trade or business of fish frying to be an offensive trade shall at the expiration of three years from that date cease to have effect for the purposes of this Part of this Act (but not for the purposes of any planning scheme in operation at the said date) without prejudice, however, to the making and confirmation of a new order under this subsection.

- (2) Any person who on any premises within a borough or urban district, or such a rural district or contributory place as aforesaid, carries on an offensive trade established without such consent, if any, as at the date of the establishment of the trade was required by subsection (1) of this section or by any corresponding enactment repealed by this Act or the Public Health Act, 1875, shall be liable to a fine not exceeding five pounds for every day on which he carries on the trade after having been convicted in respect of the establishment thereof or, where he has not been so convicted, after receiving notice from the local authority to discontinue the trade.

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- (3) Any consent of a local authority under this section to the establishment of an offensive trade may be given so as to authorise the carrying on of the trade for a limited period specified in the consent, and for such extension of that period as may from time to time be granted by the authority, and any person carrying on the trade after the expiration of the period so specified, or any such extension thereof, as the case may be, shall be liable to a fine not exceeding five pounds for each day on which he carries on the trade after notice from the local authority stating that the period, or, as the case may be, the period as extended, has expired.
- (4) Any person aggrieved by the refusal of a local authority to consent under this section to the establishment of a trade, or by any time limit attached to their consent, or by their refusal to extend such a time limit, may appeal to a court of summary jurisdiction.
- (5) An order made under sub-paragraph (b) of paragraph (ii) of subsection (1) of this section may declare a trade, business or manufacture to be an offensive trade if established or carried on in a specified part of a borough, district or contributory place and, where an order made under the said sub-paragraph, or made before the commencement of this Act under section fifty-one of the Public Health Amendment Act, 1907, is so limited, any reference in the foregoing provisions of this section to premises within a borough, district or contributory place shall, in relation to the trade, business or manufacture in question, be construed as a reference to premises within that part of the borough, district or contributory place.
- (6) For the purposes of this section, a trade, business or manufacture shall be deemed to be established not only when it is established in the first instance, but also if and when—
- (a) it is transferred or extended from the premises on which it is for the time being carried on to other premises; or
 - (b) it is resumed on any premises on which it was previously carried on, after it has been discontinued for more than eighteen months; or
 - (c) the buildings in which it is carried on are enlarged,
- but a change in the ownership or occupation of the premises on which a trade, business or manufacture is carried on, or the rebuilding of the buildings in which it is carried on when they have been wholly or partially pulled down or burnt down, without any extension of the total floor space therein, shall not for those purposes be deemed to be an establishment of the trade, business or manufacture.
- (7) A local authority who propose to apply to the Minister for confirmation of an order made under sub-paragraph (6) of paragraph (ii) of subsection (1) of this section shall publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation.

108 Byelaws as to certain trades in urban districts.

- (1) Every urban authority may, and if required by the Minister shall, make byelaws with respect to the trade or business of fish frying carried on on or in any premises or streets within their district, in order to prevent any noxious or injurious effects of the trade or business.
- (2) Without prejudice to the provisions of the preceding subsection, an urban authority, in order to prevent or diminish any noxious or injurious effects of the trade, business or manufacture in question, may make byelaws—
- (a) with respect to any trade, business or manufacture being a trade, business or manufacture which as respects their district or any part thereof is an offensive

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trade within the meaning of the last preceding section, established on premises within their district, or, as the case may be, that part thereof, either with or without their consent and either before or after the commencement of this Act;

- (b) with respect to any trade or business carried on in streets within their district, or any part thereof, being a trade or business, which as respects their district, or, as the case may be, that part thereof, is an offensive trade within the meaning of the last preceding section.
- (3) If immediately before the commencement of this Act section one hundred and thirteen of the Public Health Act, 1875, was in force in, or in any contributory place in, the district of a rural authority, the foregoing provisions of this section shall apply to that authority as regards their district, or, as the case may be, as regards that contributory place.
- (4) Subject as hereinafter provided—
- (a) any byelaw made by a local authority under this section shall cease to have effect on the expiration of ten years from the date on which it was made;
 - (b) any byelaw with respect to an offensive trade made by a local authority under the corresponding provisions of any enactment repealed by this Act, or of any such enactment as amended or extended by a local Act, shall cease to have effect on the expiration of three years from the passing of this Act:

Provided that the Minister may by order extend the period during which any byelaw mentioned in this subsection is to remain in force.

- (5) A local authority who propose to apply to the Minister for confirmation of any byelaws made under this section shall, in addition to complying with the requirements of section two hundred and fifty of the Local Government Act, 1933, publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation.

General.

109 Saving for mines, smelting works, and &c.

- (1) Nothing in this Part of this Act shall be construed as extending to a mine of any description so as to interfere with, or obstruct the efficient working of, the mine, or as extending to the smelting of ores and minerals, to the calcining, puddling and rolling of iron and other metals, to the conversion of pig iron into wrought iron, or to the reheating, annealing, hardening, forging, converting and carburising of iron and other metals, so as to interfere with or obstruct any of those processes.
- (2) The Minister may by order—
- (a) extend the preceding subsection to any other industrial process specified in the order;
 - (b) exclude from the application of that subsection so far as smoke nuisances are concerned any process specified in the subsection;

and any order so made may contain conditions and limitations subject to which the inclusion or exclusion is to take effect:

Provided that an order made by the Minister under this subsection shall be provisional only and shall not have effect until it is confirmed by Parliament.

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110 Interpretation of Part III.

(1) In this Part of this Act—

the expression " dust " does not include dust emitted from a chimney as an ingredient of smoke;

the expression " smoke " includes soot, ash, grit and gritty particles; and

the expression " chimney " includes structures and openings of any kind from or through which smoke may be emitted.

(2) In determining for the purposes of this Part of this Act whether the best practicable means have been taken for preventing, or for counteracting the effect of, a nuisance, a court shall have regard to cost and to local conditions and circumstances.